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FRANCE AND THE WAR DEBTS

I

THE Johnson Act and President Roosevelt's war-debt message of June 1, 1934, were followed by the failure of all European debtors—with the sole exception of Finland—to meet the installment of June 15.

These developments are another reminder of the fact that the most vexatious question which has poisoned the political atmosphere of the world for the last fifteen years and which has, no doubt, largely contributed to the depression, has not yet been solved. Or, perhaps, it would be more exact to say that the solution which has imposed itself largely against the will of the parties concerned—that of cancellation—has not yet received official recognition, and is not likely to receive it in the immediate future.

There is probably no other question in the whole unhappy history of the world since the great war that demonstrates in a more striking manner the remarkable limitations of our vision, and of our ability to analyze and control the intricate interplay of complex international economic factors, especially when the decision bears not only on fundamental economic problems, but also on important political issues. This applies, of course, not only to war debts, but also to reparations, the two questions being inextricably tied together—Washington's official policy to the contrary notwithstanding. The heated controversy which raged around every stage of the debt-reparations history and the long series of ingenious schemes for a "final" settlement —all of which ended in disaster—schemes which were the

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work of some of the most distinguished representatives of international finance, business and economics, offer a fruitful if rather disconcerting field for the meditation of the student. They should also serve as a salutary warning to the over-enthusiastic admirers of "a planned economy", who are only too eager to assume full responsibility for the future organization of the world.

Although at the present time the whole war-debt question seems to have been relegated somewhat to the background both in the United States and in Europe, sooner or later it is bound to come up again for public discussion and a new "final" settlement. In order to obtain a sober estimate of the chances of such a settlement it might be useful to recall the course of events which led to France's default and the arguments advanced in that country against the payment of the installment of December 15, 1932. France occupies, in a sense, a key position in the whole of the war-debt controversy, because she is the chief European debtor that openly and deliberately refused to meet her obligations under her funding agreement with the United States, thus following a policy which is in marked contrast to that of Great Britain, who paid in gold the installment of December 15, 1932, and continued until the passing of the Johnson Act to make token payments. The French attitude presents particular interest because, since the war, France has been a staunch upholder of the sanctity of international agreements. Nevertheless the French Parliament, with the unquestionable and almost unanimous endorsement of the country, repudiated its signature in the early hours of December 14, 1932. This remarkable departure from the traditional policy of the country deserves a few words of explanation.

The truth of the matter is that France never accepted, in her conscience, the repayment of her debts to the United States and to Great Britain, as an equitable burden. This inescapable conclusion cannot have failed to impress itself on foreign observers who have had an opportunity to discuss the matter with Frenchmen, irrespective of their station in life. It is certainly my personal impression acquired in the course of frequent and

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protracted visits to France since the end of the war. This impression was greatly strengthened by a careful study of the question which I undertook during my visit to France in the summer of 1933. Personal impressions, however, are obviously an inadequate ground for broad generalizations. Nor do they explain the ratification of the Mellon-Bérenger agreement by the French Parliament in the summer of 1929 and its subsequent repudiation in December 1932. A closer examination of these two cardinal points in the French war-debt policy is perhaps more helpful than anything else in elucidating the real forces which determined the attitude of France.

II

Without attempting to trace here the familiar stages of the war-debt negotiations, it may be recalled that France was the last of the important European countries to reach a funding agreement with both the United States and Great Britain. On the morrow of the war it was generally believed in Europe that payment of the debts of the former Allies of the United States would never be demanded, although no one seemed to know exactly by what method the cancellation was to take place. It must be said at once that this popular opinion, which was shared by many statesmen, never received any encouragement from the United States Government, which pointed out in no uncertain language that such expectations were entirely without foundation. It was only in 1922, however, that the European nations were brought to realize that the United States Treasury meant business. In January 1923 Mr. Baldwin reached an agreement with the American War Debt Commission after negotiations which lasted for about four weeks. It took much longer to come to terms with France. The Washington mission of M. Parmentier in September-October 1922 proved a complete failure. M. Caillaux was no more successful in September-October 1925. He was followed by M. Bérenger, who initiated war-debt negotiations in December 1925 and finally brought them to a successful conclusion in April 1926 when an agreement was reached. In July of the same year the London agreement funding the French debt to Great Britain

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was signed by Winston Churchill and M. Caillaux. Both these agreements were received in France with open hostility, and it was not until July 1929 that they came up for ratification before the French Parliament. In the meantime M. Poincaré made provisional payments to Washington and London which were equal in amount to the annuities stipulated in the agreements. This provisional arrangement, however, obviously could not be continued indefinitely. But as weeks, months and years passed by, in Parliament, in the press and in the country at large the hostility to ratification seemed to increase. It was attacked from every side and by all political parties. Ratification therefore was first of all a magnificent and well-deserved tribute to Poincaré's truly remarkable leadership and indomitable energy. His efforts were greatly helped by two factors not directly connected with the funding of the "political" debt—the term usually employed in France to describe the war-time loans; these two factors were the so-called war-stocks debt, and the impending acceptance of the Young Plan.

The war-stocks debt was different in origin and character from the "political" debt of France to the United States. The American Expeditionary Force brought to France in 1917 and 1918 enormous supplies of materials of war of every kind. These war supplies consisted of such items as railroad equipment, including 1,300 locomotives and 18,000 cars, automobiles, implements, machine-tools, timber, gasoline, clothing, textiles and foodstuffs. The Americans also built railroad lines, workshops and various dwellings and warehouses. After the armistice the United States decided to dispose of these war stocks, and a liquidation commission went to France to negotiate the transaction with the French Government. Protracted negotiations took place and finally resulted in the agreement of August 1, 1919. It has been charged since that the United States Treasury exercised considerable pressure upon the French Government in order to make them accept terms which they considered exorbitant. M. Evain declared in the Chamber of Deputies in the debate of July 1929 that the American Government threatened to suspend all payments to both governmental agencies and private firms for the supplies

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provided for the Expeditionary Force unless the negotiations for the sale of these American war stocks were brought to a satisfactory conclusion. These allegations, however, are not reproduced in the official French account of war-debt settlements prepared by M. Lucien Petit, a staunch upholder of France's side of the case. M. Petit, moreover, points out that French public opinion was strongly in favor of the purchase of such war stocks since it appeared to offer a profitable commercial transaction; it was considered as a measure of immediate relief which would check the rise in the cost of living, and supply some of the essential commodities which, on the morrow of the armistice, were not procurable through the ordinary channels of foreign trade.[1] In accordance with the terms of the agreement of August 1, 1919, France was to pay for these war stocks the sum of 400 million dollars at the expiration of a period of ten years, that is, on August 1, 1929.[2] The Mellon-Bérenger agreement merged the debt on account of these war stocks with the war debt of France to the United States. The entire indebtedness was to be discharged by the making of sixty-two annual payments, which in 1926 and 1927 were to amount to 30 million dollars, in 1928 and 1929 to 32.5 million dollars, and which were to rise gradually to 125 millions of dollars in 1987. The war stocks proved to be an extremely important element in bringing about the ratification of the debt

[1] Lucien Petit, *Le Régime des dettes interalliées, 1919-1929*, Paris, 1932, p. 216.

[2] Interest at the rate of 5 per cent was charged as from August 1, 1920, interest due for the first year of the agreement being cancelled by the United States as a compensation for the possible depreciation of the franc. The original American valuation of the stocks was 750 million dollars, while the original French offer was 1,500 million francs or, at the current rate of exchange of nine francs to the dollar, about 166 million dollars. A comparison of these figures with the final totals of the agreement does not support the often advanced French contention that the pressure exercised by the United States Treasury and political considerations, with the object of winning American endorsement for the Versailles Treaty, prevented France from obtaining a fair bargain. If the sale of American war stocks resulted in considerable losses for the French Treasury, this was due to the perfectly shocking way in which the sale was carried on, and to the depreciation of the franc. It is difficult to see how the United States Government can be held responsible for either.

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agreements by the French Parliament. The United States Government was showing considerable irritation at the delays in putting the Mellon-Bérenger agreement officially into effect. It is true that Poincaré, as we have seen, made the stipulated payments, but this was not what the United States Government wanted. In his budget message to Congress in December 1928 President Coolidge pointed out that France was expected to pay the United States on August 1, 1929, 400 million dollars on this war stocks account, that this was consolidated in the Mellon-Bérenger agreement, but that the French Parliament had failed so far to ratify it. The French Government, therefore, was confronted with a dilemma: it must either obtain the ratification of the agreement, or make payment of the 400 million dollars and thus bring to nought the debt settlement with the United States, which it had taken years to negotiate and which had brought France important concessions from her creditor. Indeed, it had put her among the most favored of America's debtors.

The second important factor which greatly influenced Parliament in ratifying the debt agreement was the Young Plan, which eventually emerged in final shape in June 1929 after four months of stormy discussion. It was generally believed in France, and this was the point of view of Poincaré, that the Dawes Plan afforded her full satisfaction. But it had definite, flagrant and undeniable defects. It was avowedly a provisional settlement. In theory, the German reparations debt still remained at the astronomical figure of 132 billion gold marks; and the standard Dawes annuity of 2,500 million marks did not amount to even 2 per cent of this sum. Therefore, again in theory, Germany was to continue payments *ad infinitum,* which was obviously absurd. The Young Plan, while reducing somewhat the sums due to the Allies from Germany, had important advantages: it established definitely the number and the size of the German annuities (the Dawes annuities could be increased after September 1, 1929, by the application of the index of prosperity); it provided for the commercialization of the annuities; many people hoped that by leading to the placement of large blocks of German obligations in the United

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States, it would create a real interest in this country in Germany's fulfilling the terms of the agreement; it established the priority of reparations; it set up the Bank for International Settlements, an international financial body, as an intermediary between the debtor and creditor governments; and, most important of all, it established a close factual link between reparations and war debts. This last was exactly what France had been struggling for since 1919, and what had always been denied to her by the United States. The close interdependence of reparations and war debts was seen in the similarity of the postponement clauses in the Young Plan and in the war-debts agreements between the European nations and the United States; and also in the provisions for the eventual use of the profits of the Bank for International Settlements for the payment of a portion of Germany's last twenty-two annuities. But above all the interdependence was apparent in the identity of the amounts of the last twenty-two annuities due from Germany and the combined annuities which the European nations entitled to such payments were to make to the United States. A further link between reparations and war debts was established by the "Concurrent Memorandum, but not a Part of the Report," which provided for the benefits Germany was to obtain in case of a reduction of the payments due from her own creditors to the United States.

III

The inescapable consequences of the impending payment of the debt on account of war stocks and the far-reaching significance of the factual connection between war debts and reparations established by the Young Plan were the keynote of Poincaré's argument in favor of ratification. He spoke before the Chamber of Deputies for several days, making one of the most amazing oratorical efforts in the history of modern parliaments. It is impossible not to admire his logic, his power of expression, his sincerity and his earnest desire to serve his country, even when one may feel far from agreeing with his general policy and, indeed, even believe that on him rested an uncommonly large share of responsibility for the present

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unhappy condition of the world. Poincaré approached the problem primarily as a lawyer, the legalistic attitude being the dominating note in the war-debt discussion in the French Parliament. He stated with much emphasis that the question before the house was that of the ratification of the debt agreements, not of the debts themselves. The validity of the debts was established beyond doubt. In order to prove this point Poincaré presented to the Chamber of Deputies a masterly analysis of the legal aspects of the problem, and a complete survey of the history of the war-debt negotiations, one which left nothing to be desired in either lucidity or objectivity. He did not hesitate to quote a report of the French High Commissioner to the United States, dated July 30, 1918, which made it perfectly clear that Washington expected the debts to be repaid within a reasonable period of time after the end of the war.[3] But if Poincaré admitted unreservedly the validity of the American claim, both in form and essence, he did not conceal that on moral and economic grounds France had a counter-claim which the United States had refused to admit. In 1917 and in the early part of 1918 France fought America's battle while the United States army was still getting ready to enter the trenches. Among the various Allied nations France had had the unique and unfortunate privilege of providing the battlefield for the armies of the world, and this was the real source of her exceptional economic and financial difficulties. Poincaré himself has always believed in the need for an equitable redistribution of war costs, including financial losses, that is, a redistribution in proportion to the sacrifices made by the Allied nations. These claims, unfortunately, have no binding legal force, and the United States has invariably turned a deaf

[3] Poincaré pointed out that there was not a single document which would indicate the desire of the United States to treat war loans as a gift to France. He, however, disclaimed any knowledge of a statement ascribed in a report issued by the United States Treasury in 1926 to M. Ribot, who was represented as having in 1917 especially requested that no bill providing for a gift to France should be introduced in Congress. If M. Ribot made such a request, he did not so inform the French Government of the day. The reason for M. Ribot's request, if it was actually made, was probably his reluctance to accept a privileged position for France at a time when all the Allies needed the financial assistance of the United States.

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ear to the numerous representations to this effect made by successive French Governments, including that of Herriot in 1924. France has also given close attention to the oft advanced contention that, both in the United States and in Great Britain, her war debt has been enormously increased by the excessive prices charged by American and British manufacturers, of which excessive charges the American Treasury and the British Exchequer obtained a considerable share through the application of the excess-profits tax. An official of the French Commissariat, M. Diedrich, was assigned in 1925 the task of investigating these allegations, and came to the conclusion that in the case of the United States the overcharge amounted to 1,840 million dollars.[4] These computations, which were used in the Franco-American negotiations, Poincaré confessed, "unfortunately are neither mathematically exact, nor have they any book-keeping value," and the United States refused to take them into consideration when reducing the amount of the French debt.

Having thus made clear his personal position in the matter of war debts as well as the position of his Government, Poincaré proceeded to develop an argument in favor of ratification which was based on a careful analysis of the situation created by the

[4] M. Piétri, who participated in the evaluation of the alleged overcharges at the request of the Finance Committee of the Chamber of Deputies, amplified Poincaré's statement. He reached the conclusion that excessive profits realized by the American manufacturers represented 43 per cent of the total French war expenditure in the United States, and that those of the British manufacturers represented 39 per cent. The great sums, running into hundreds of millions of dollars, collected on these excess profits by the excess profits tax—sums which went into the United States Treasury and the British Exchequer—were actually paid by France because the manufacturers, anticipating the levy, increased their prices accordingly. France, therefore, after having made large contributions to her debtors in the shape of excess profits taxes, was asked to make the same payments all over again, when they appeared as a part of her war debt. M. Piétri, however, frankly admitted that the reduction conceded to France by both Great Britain and the United States by virtue of the funding agreements was really larger than what she could claim was due her owing to the excess prices she paid. He merely expressed his regret that, as a result of what he considered the incapacity of French diplomacy, reductions which were actually due to France were made to appear as an evidence of American and British generosity. This diplomatic blunder had prevented France from obtaining further reductions.

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impending payment of the war-stocks debt and, especially, on the great victory for the traditional French thesis that he found in the factual link between reparations and war debts established by the Young Plan. With this argument we are already familiar. Poincaré also pointed to the danger of refusing ratification. Would it not be an invitation to Germany to do the same? M. Franklin-Bouillon was right when he remarked that the whole of Poincaré's thesis was only too reminiscent of the celebrated slogan: "Germany will pay!"

Poincaré's case for ratification naturally did not pass unchallenged. The great mass of the French people found it difficult to understand the complicated situation created by the war-stocks debt and the advantages which the legally-trained mind of the head of the Government had discovered in the Young Plan. Influential and well-organized groups, among which the League of Ex-Service Men should be mentioned, were unconditionally opposed to the ratification of the debt agreements. The popular clamor for their rejection on equitable grounds—a clamor with which the Poincaré Government was itself in sympathy—had its spokesmen in the Chamber. And in the French Parliament, as in other legislatures, there were many members of the legal profession, who devised ingenious methods for attacking the very foundation of the Government's case, namely the validity of the debt contracts in law.

One of the most outspoken opponents of ratification was Louis Marin, a member of the present Doumergue Government. He developed with much sincere feeling and eloquence his celebrated thesis of an equitable distribution of war charges, which he reënforced by what he called the doctrine of substitution, that is, the substitution of French soldiers after April 6, 1917, for the American soldiers who did not arrive for another year. He maintained that in estimating war costs not only dollars and pounds should be taken into consideration, but also losses in human lives, human suffering, the destruction of national wealth, and the devastation of territory. France's share due to these costs more than balanced what she owed to the United States and England in terms of money.

Just as uncompromising was Henry Franklin-Bouillon.

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While basing his opposition on grounds of equity and justice, he sought to reënforce his position by the following legal argument: The certificates of indebtedness issued by the French Government to the United States Treasury were so worded as to allow the United States to call for the payment of the debt at any time. Now it was perfectly clear that three or four billion dollars could not be paid at a moment's notice. This indicated, in the opinion of M. Franklin-Bouillon, that a debt certificate was not really an obligation in the strict sense of the word. It was merely a formal receipt, an acknowledgment of the sums received, and did not constitute a legally binding contract. M. Franklin-Bouillon defended this curious legal interpretation with remarkable persistence and magnificent eloquence worthy of a better cause. A similar argument in a somewhat different form was put forward by M. Texier and attracted a great deal of attention. The war-debt certificates of 1917, M. Texier argued, were payable on demand, that is, immediately, but the duration of the war during which and for the purpose of which they were issued was undeterminable at the time of issue; there was therefore a fundamental contradiction between the two constituent elements of these certificates, their *raison d'être* and their wording, and that destroyed their binding character. There were other ingenious legal interpretations based on subtle analogies drawn from the field of the law of contracts and even from the land law. One of the learned legal theorists went so far as to maintain that war loans were real contracts entered into under coercion, under the pressure of an extreme emergency, and that therefore they were not binding. If this doctrine were to be accepted, all war-time agreements would have to be declared invalid, an obvious *reductio ad absurdum*.

The real battle over the ratification of the agreements, however, centered not so much upon the legal theories concerning the validity of the debt certificates and their binding power, as on the necessity of making payments to the United States conditional on the fulfillment by Germany of her reparation obligations. This was the old issue of the "safeguard clause" which the French emissaries to Washington had sought in vain

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to insert in the Franco-American agreement. Poincaré himself was strongly in favor of the safeguard clause, but, confronted by the obstinate refusal of Washington to admit it, and by the impending payment of the war-stocks debt, he maintained, as we have seen, that the factual connection between war debts and reparations established by the Young Plan was for all practical purposes equivalent to the safeguard clause. It was, anyhow, the best solution France could hope to obtain. This contention was challenged by his opponents. M. Piétri described the provisions of the Young Plan as a mere *ersatz* for the safeguard clause and utterly inadequate. Gaston Bergery saw nothing in the Young Plan that would indicate that the United States would revise their war-debt policy in case of Germany's default. America had always insisted, he argued, that her attitude toward the debtors was based on their capacity to pay. It could perfectly well be said that what France lost through the default of Germany she had gained from some other sources. To avoid the difficulties of transfer, the United States might invest the proceeds of debt payments in France, and this would lead to the virtual colonization of France by American capital.

Edouard Herriot was also among those who opposed the ratification of the agreements. He pointed out that the connection between war debts and reparations established by the Young Plan was one-sided and entirely for the benefit of Germany; there was nothing in it to give relief to the former Allies in case of Germany's default. The link between war debts and reparations, in his opinion, was admitted by the United States as early as 1919, when it refused to have the war debts discussed at Versailles on the ground that the settlement with France would in all probability have to take into consideration the sums paid to her by her ex-enemies. In a speech of rare eloquence Herriot made an appeal to the United States on grounds of justice and equity in the name of France, "*la mère douloureuse de la victoire.*" In the whole history of post-war settlements he perceived the struggle between two conceptions, two ideas. One was the old traditional idea of ceded territory, of tributes, of *vae victis*. It reminded him of the kind of

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device found on Egyptian tombs, where the victor is shown holding the enslaving chain of the defeated. A moment's reflection showed that by such a chain both were immobilized. The other conception which had grown up from the very complexity of the last war was the conception of the common position of both victor and vanquished. This had found its practical expression in Lord Balfour's statesmanlike note of August 1, 1922.

The Socialist Party, through its most eminent representatives, Léon Blum and Vincent Auriol, criticized in its entirety the policy of Poincaré, especially the occupation of the Ruhr. The Socialist Party, they said, had always been in favor of the equitable distribution of war costs among the Allies and the right of France to reparations for the damages she had suffered, within Germany's capacity to pay. They pleaded for disarmament and a general policy of pacification and international collaboration. Vincent Auriol was one of the very few deputies who pointed to the practical impossibility of making transfers to the United States, because of American tariff barriers.

Even more telling, perhaps, than the criticism by the opponents of ratification was its defense by the supporters of the Government. It was dominated by one theme: France would never pay the United States more than what she had received from Germany. New arguments were added to reënforce Poincaré's case: the political and economic danger of alienating the friendship of the United States and Great Britain; and the rather uncomfortable argument that France had never questioned the validity of her debts to the neutral states and that she was therefore not justified in challenging those of the United States and Great Britain, for the simple reason that they entered the struggle on her side at the very time she needed help the most. M. Henri Guernut, a supporter of ratification, expressed what was probably in the minds of most of his colleagues who voted with him, when he traced the following unflattering picture of the United States:

> Men who had come from afar, he said, and had settled on an arid soil, men who for centuries had fought like lions against every hostile element, might have acquired robust and sturdy

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> virtues, but they certainly had not prepared themselves for the exercise of evangelical self-abnegation. They might read repeatedly and night after night, the words of Holy Writ which they found in the sacred volume they had carried with them into exile. But how wide the difference between repeating such words and understanding their meaning! Still greater was the difference between understanding them and putting them into practice. And upon the pages of the Book of Books, open at the "Sermon on the Mount", lay a ledger which set forth the debts that must duly be collected. It was the misfortune of our American friends that they had become too rich and had become so too quickly. They must still, and for some time, lack the useful instructions of adversity. But wait, gentlemen, wait! Wait until the excess of gold in America has produced its inescapable consequences. When Americans had experienced overproduction and unemployment, when that attitude which they assumed toward the nations of the old world had allied and aligned Europe against them, when they had met with some resistance, when they had experienced reverses, when they had suffered,—then they would be forced to take the path which leads to the ways and practices of human solidarity. At that time, gentlemen, the question of the debts would be reopened. . . . We must say that we will pay! We shall pay as long as we are able to, and we shall be able to as long as we are paid ourselves.

This is exactly the course of action which the French Parliament followed in July 1929: it ratified the agreements with the United States and Great Britain by the narrow vote of 300 to 292. Ratification itself was unconditional—no other ratification could be acceptable to the United States. But simultaneously with the ratification both houses of Parliament passed resolutions which solemnly declared that the sums to be paid in virtue of the debt agreements must come exclusively from the payments France received from her own reparation debtors. M. Renaitour was probably right when he remarked that a ratification of this kind was a ratification with a mental reservation, and with the deliberate intent of not fulfilling some of the provisions of the agreements. The resolutions nevertheless expressed in no uncertain language one of the very few decisions

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which had the solid and unanimous backing not only of all the political parties, but also of the country at large. The record of subsequent developments in the controversy over war debts has fully demonstrated that on this subject at least France has not changed her mind.

IV

The next important milestone in the history of the war-debt question before the French Parliament was the great debate on the payment of the installment of December 15, 1932, which took place December 12 and 13, and resulted in the defeat of the Herriot Government. It was the irony of fate that Herriot, who voted against the ratification and the Hoover moratorium, had now to assume the ungrateful and hopeless task of championing the fulfillment of the Franco-American agreement, subject, it is true, to important reservations. International events of far-reaching significance had taken place between July 1929 and December 1932. They constituted the very essence of the debate of December, and their presentation therefore may be left to the principals of the parliamentary battle.

Herriot opened his case by acknowledging the debt of gratitude the Allies owed to the United States. But the recognition of the services rendered by America to the cause for which France was fighting did not prevent a frank discussion of the other aspects of the situation. In framing the Treaty of Versailles France had made important concessions to the United States—in the Saar question, the control of the left bank of the Rhine, the organization of the League of Nations—and had done this in exchange for promised guarantees of French security. These sacrifices had proved vain: the security pact had failed to materialize, the United States had not ratified the Treaty and had remained outside the League of Nations. Turning to the debt agreement, Herriot pointed out that in 1926 Mr. Mellon had given a very broad and generous definition of the debtor's capacity to pay and that Bérenger had stressed the point that this was to take into account the sums France was to receive from Germany. The resolutions passed by both houses of Parliament in France at the time of the ratification

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had made her attitude perfectly clear, although it had been conceded that legally these resolutions were not part of the ratification. The Young Plan had established at least a "political" link between reparations and war debts. But the Hoover moratorium, in June 1931, had completely upset all existing international arrangements. Analyzing the text of the Hoover proposal, Herriot expressed the opinion that its opening section, which provided for a moratorium on all international payments resulting from the war, was really in contradiction of its closing section, which opposed the revision or annulment of war debts. There was nothing in this text, however, that would prevent the extension of the moratorium to the French installment, and this was all that France was asking for. And then, Herriot remarked, "if one desires to avoid any connection between reparations and debts, the best thing to do is to leave debts alone." The Hoover moratorium not only imposed upon France financial losses which were much heavier than those suffered by any other nation, but, what was even more important, it destroyed her very title to reparations. This was a fact of formidable political and moral significance and no legal argument could explain it away. In support of this thesis Herriot presented a brief survey of the familiar events of this troubled period: the London Conference of July 20, 1931, the well-known report of the Wiggin committee, the Hoover-Laval conversations in Washington in October. He interpreted these events as an invitation from the United States to Europe to get rid of her ancient disorders and animosities. After that, the United States would do its share. The American advice was listened to and negotiations for the revision of the Young Plan were set afoot. In the meantime, on December 18, 1931, came the belated ratification of the Hoover moratorium by Congress, with its specific provision that it should in no way be construed as opening the way for the revision or cancellation of the debts. But even in this resolution there was nothing that would prevent the United States from extending the moratorium to France. In Europe events continued their course. On December 23 the Basle Committee, in which the United States was represented by Mr. Walter

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Stewart, issued its report urging the revision of the Young Plan in the name of the economic restoration of the world. Then in June 1932 an agreement was reached in Lausanne between the European nations, which reduced German reparations to a mere fraction of what they once had been. The ratification of this arrangement, in virtue of the gentlemen's agreement, was made conditional on the revision of the war-debt settlements between the European countries and the United States. Failure of such revision would mean a return to the Young Plan. In the meantime Germany received a complete moratorium. A moratorium on war debts was also extended to France by Great Britain. At Lausanne Europe said to the United States: "I have done my duty. Now I am waiting." The official reply which came from across the Atlantic was not encouraging. Hoover declared that Lausanne was a purely European matter. But Senator Borah in a radio speech delivered on July 23, 1932, spoke in different terms. The counterpart of Lausanne, said Borah, was in Geneva. Not only in Geneva, Herriot remarked, but also in Washington, a statement which received the unanimous applause of the Chamber.

This part of Herriot's speech, indeed, met with the complete approval of his audience, save for the Communists who, on general grounds of Communist theory, opposed all payments on account of war debts and reparations. Arguments similar to that of the Prime Minister were advanced by every speaker; all alike blamed Hoover for the destruction of the Young Plan, and for not living up to his promises. Herriot's real difficulties began when he attempted to build up his case for the payment of the December installment. Negotiations in regard to this payment were delayed by the presidential elections in the United States. On November 14, or immediately after the elections, France sent to Washington a first note, in which she asked for the opening of war-debt negotiations and demanded an extension of the moratorium. These requests were not granted, but Herriot saw a promise for the future in a statement issued by the President-elect on November 23. No decisive step was to be expected from Washington until the inauguration

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of the new President. Herriot admitted that he had lived through an intense inner struggle, and that he had had to overcome profound personal emotion—a feeling of revolt shared by the whole country, at the thought that France, after all the sacrifices she had already made, should now be forced to make payments to the United States. He examined the various courses which the Government might take. He rejected the various suggestions of the press—such as that of making the payment to a "blocked account" or to the Bank for International Settlements; he rejected arbitration as impracticable. He also rejected repudiation and an unconditional payment. There was really no satisfactory solution, but the one he believed to be the best was to make the payment with definite reservations, and he gave the following reasons for his decision:

The United States was in a condition of political interregnum, and this was the worst possible time for France to take definite action in a question of vital importance. The effect of default in America would be disastrous, especially since anti-French propaganda there had been extremely active. There was real danger of a tariff war, since the United States refused to recognize the fact that it was impossible to exact large payments from abroad and refuse at the same time to buy foreign goods. The war loans had been financed through the issue of Liberty Bonds which were held by sixty-one million people. Their reaction in case of a French default would be extremely unfavorable. The whole matter of war debts, which it had taken seven years to settle, would be thrown into utter confusion. One must also remember, he said, the international repercussions of default. France was not only a debtor but also a creditor nation and she should refrain from setting an example which might easily prove to be contagious. The great danger of financial and political isolation should not be overlooked. Default would mean the parting of the ways with England, who had stood by France with a splendid loyalty. But perhaps the most important consideration of all was the necessity and the duty of upholding the sanctity of a signature attached to an international agreement. In the respect paid to such international obligations, which are the very basis of inter-

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national coöperation, lay the hope of the world and the best defense of France against Germany. Failure to meet the December installment of only nineteen million dollars, while England was paying her much larger installment of ninety-five millions, would make extremely difficult if not altogether impossible the resumption of negotiations with the United States.

It will appear from this brief summary of Herriot's argument that his plea for the payment of the December installment was the product of a painful inner struggle. No wonder therefore that the practical solution he offered bore the earmarks of a compromise. It became known in the course of the debate that Washington had refused to accept a conditional payment from England, and it was obviously useless for France to attempt to follow a similar course. Herriot hoped to overcome this difficulty by accompanying the payment of the installment with unilateral or declaratory reservations. The resolution submitted on his behalf to Parliament demanded that immediate negotiations for the revision of the debt settlements should be opened between France and the United States and declared that the existing agreement was no longer compatible with the situation created by the Hoover moratorium and subsequent events; that France was making the stipulated payment but requested that it should be credited as a payment toward the impending "final" settlement; and that if such a settlement was not arrived at France would be unable to continue her payments to the United States, unless she herself was paid by Germany. It is a rather telling commentary on the shortness of human memory that the author of this resolution is frequently represented in the American press as a supporter of the policy of France's continuing to pay the United States.

The debate which followed the ministerial declaration naturally contained many virtual repetitions of those arguments against the validity of the debts, based on considerations of equity and morality, which were advanced in 1929. They were merely variations on the same theme, and no attempt will be made to reproduce them here. The real questions at issue were the consequences of the Hoover moratorium and later events, and the installment of December 15. The solution

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offered by Herriot was attacked from different quarters. Louis Marin, whose position is of particular interest since, as we have said, he is a member of the present Doumergue Government, advanced the theory, taken from civil law, that a creditor who prevents his debtor from collecting his own debts destroys *ipso facto* the validity of his claim. This was exactly what the United States did by forcing upon Europe the Hoover moratorium. The purpose of the Hoover move (about which, Herriot remarked, he preferred to say nothing) was the desire to save the large investments which American bankers had unwisely made in Germany. Not only did the moratorium fail to achieve its purpose, that of bringing about the economic restoration of Europe, but the American bankers have no one but themselves to blame, since the priority of reparations was repeatedly brought to their attention by President Harding, Mr. Parker Gilbert and Secretary Kellogg. The payment of the December installment would constitute a "novation" of the contract between France and the United States, and would be equivalent to admitting that France had not been relieved of her obligations.[5] There would be no reason whatsoever to refuse further payments. The effects of the Hoover moratorium, of the Basle report, and of the Lausanne agreement, as stated by Herriot himself, would thus be nullified. The repayment would also destroy the link between war debts and reparations, which was the very reason for the ratification of the agreement in 1929. To this course public opinion would never agree. Marin pointed out that the reservations Herriot attempted to attach to the payment of the installment had already been rejected by Washington in the case of England. He saw little promise either in Roosevelt's statement or in the calling of a new international conference. From each of the

[5] George Chauvin criticized the "novation" theory on the ground that it attempted an impossible thing, the application of a principle of civil law to international agreements. There was no document to indicate that the United States had ever agreed to cancel its claims on France if France abandoned her claims on Germany. Moreover, even in civil law "novation" stipulates a change either in the parties to the contract or in the elements of the contract. No "novation" in this sense had taken place, in the case of the Franco-American debt agreement.

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preceding conferences France had invariably emerged with the loss of some of the legitimate fruits of victory. It was entirely out of the question to endanger, for the sake of obtaining a revision of the debt settlements, France's security through disarmament. No half-measures would solve the problem. France was both morally and financially in an exceptionally strong position. The blunt refusal to pay was the best and the only method to bring about the revision of the debts and the ratification of the Lausanne settlement. There was no reason to fear the effect of default upon French credit, as France had never put her own debtors in the position in which she found herself as a result of the Hoover moratorium. The argument based on the effect of default upon the sixty-one million Americans holding Liberty Bonds was not convincing because they could not be directly affected; the United States Treasury alone would take the loss. It was grotesque to imagine, as some had done, that a great nation like the United States would seize French liners or any other French property. And, in any case, American holdings in France were much larger than French holdings in the United States. The tariff war argument also failed to impress Marin: was not a tariff war already going on? War debts should not be allowed to be used as a lever in commercial negotiations. His conclusion was clearcut: France could not and would not pay.

The remarks of Gaston Bergery, *rapporteur* of the committee on foreign affairs, also present considerable interest. Bergery discussed, first, the broader problem of the effect of the developments outlined by Herriot upon the war-debt situation. He believed that the practical cancellation of reparations made any further payment of the French debt quite out of the question. With that notable predilection for legal theories which is one of the striking aspects of the French approach to war debts, Bergery advanced the venerable doctrine of international law known as *rebus sic stantibus,* to the effect that international agreements must be observed only so long as the essential conditions which brought about their signature continue to exist. The condition essential to the Franco-American agreement was the continued payment of German reparations, and they were

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no longer being paid. Cancellation would impose no unfair burden upon the United States because France had an enormous debt and the American people had greatly profited by the proceeds of the war loans, which had been spent in the United States. There was also the question of transfers. The repayment of the war debts to the United States was an economic impossibility. War loans proved to be practicable only because their proceeds were spent in the countries which made the loans. The payment of reparations was made possible by the fact that they were largely paid in kind, and also by the English and American loans to Germany. Turning to Herriot's argument in favor of making the payment due on December 15, Bergery said, not without good common sense, that respect for a country's signature was, no doubt, a meritorious thing, but there was no reason why this thesis should not retain its force for the next fifty-nine years; the limited respect for signature—one that would cover merely six months—did not commend itself to the committee on foreign affairs, who rejected the Government's resolution by twenty-six votes to nine. Bergery also denied the pernicious effect of repudiation upon international affairs. He expressed the opinion that it might have a salutary effect upon Congress and would do less harm then than six months later. France would accept no settlement which was not an unconditional annulment. There was no reason to believe that default would strain relations with Great Britain, nor was it likely to injure French credit. Bergery quoted Sir Walter Layton to the effect that cancellation of war debts would not undermine confidence in international agreements, but on the contrary would be received all over the world with a sigh of relief. The immediate cancellation of war debts would save France from economic ruin and the depreciation of her currency, and thus preserve her from going through the unhappy experiences which brought Germany to the writing off of her reparation obligations.

An interesting aspect of the war-debt discussion in France is the subordinate position assigned in it to the economic side of the problem, to the impossibility of making large transfers to a country over a long period of years without a counter-

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part—that is, without the creditor's accepting foreign goods and services. The adverse effect of such transfers, it will be remembered, formed the very essence of the British argument for cancellation or, failing this, for a drastic revision of the debt agreements. But if the legalistic theories so prominent in France made little impression in England, a marked indifference was displayed by the French to the all-important consequences of unilateral financial transfers. They were mentioned, no doubt, by Herriot, Bergery, Pierre Cot, and a few other speakers, but they were always relegated, so to speak, to the second line of defense and were used to reënforce the main thesis, which had nothing to do with economics.

The inherent weakness of this legalistic position was brought to the attention of the Chamber in a remarkable speech delivered by Pierre Forgeot, who spoke in support of the December payment. Forgeot admitted that he shared the feeling which swept the country. "My first reaction, your own, that of all Frenchmen, that of the President of the Council of Ministers," he said, ". . . was a reaction of the instincts, of race, one of indignation, almost of anger. It was a brutal 'no', an uncompromising 'no' that came to our lips. . . . And the indignation we felt then is still felt by the whole of our people." But this reaction, Forgeot argued, must be overcome. Hoover, no doubt, brought the machinery of the Young Plan to a somewhat abrupt stop. But was there any reason to believe that the Young Plan would continue to function? Did Hoover invent the depression? Did not Germany threaten to suspend payments? And if the Young Plan had broken down, would not the tragic question of war debts have arisen even if there had been no Hoover moratorium? These considerations, which seem eminently sound and which show in their true light the artificiality and inherent weakness of the official French argument, were not intended to justify the continuation of payments to the United States. They were ignored by the house. Forgeot supported the Herriot resolution on grounds of expediency, as the best solution under existing conditions.

Other deputies who voted with the Government were careful to point out that in their opinion the payment of the December

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installment would in no way tie the hands of France for fifty-nine years, but, on the contrary, would put her in a stronger position for the repudiation of any further payments, if a satisfactory revision of the agreement was not obtained. As Piétri put it, France had always believed that if right triumphed over might, there were also cases when reason must triumph over right.

It is needless to dwell on the abyss which separates the position of Herriot and his followers from the official attitude of Washington and of a solid majority of public opinion in this country. But even the very slight concessions to the United States advocated by the French Government were not acceptable to the French Parliament. Herriot was defeated in the early hours of December 14, and the Chamber of Deputies adopted the lengthy joint resolution of the finance and foreign affairs committees by a vote of 380 to 57. This resolution applied to the Hoover moratorium, in effect, the doctrine of international law already cited, *rebus sic stantibus*. It demanded the calling of an international conference for the revision of all international payments having no economic counterpart, and it refused to pay the December installment. The most striking feature of the 1932 debate is the probably unexampled unity of all parties, from the extreme Right to the Communists, in refusing to continue the payments to the United States under the Mellon-Bérenger agreement. The Herriot resolution and the 187 (against 402) deputies who voted for it left no doubt whatsoever that they advocated merely the payment of the December installment and that this payment was to be the last one.

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At the end of his speech and when he could already anticipate defeat Herriot, who is not only a statesman but also a scholar, recounted the following historical incident. France owed certain payments to the United States by virtue of obligations contracted by Napoleon. The Restoration Government refused to admit them. In 1834, under Louis Philippe, the problem was brought to the attention of the French min-

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istry headed by the Duc de Broglie, who definitely took the position that the payment must be made. "I must say," Herriot added amidst much laughter, "that the Government of the Duc de Broglie was overthrown." But the story did not end there. In 1835 the Duc de Broglie was recalled to power, in order to ratify the engagement which had been rejected in the preceding year, added information which was received by the House with a new outburst of merriment.

Is history likely to repeat itself? So many unexpected and, indeed, unbelievable events have taken place in the course of the last two decades that it would be most unwise to venture any prophecy for the future. Our survey of the attitude of the French Parliament and the general trend of public opinion offers no ground for an optimistic forecast. France has always believed and still believes that the war-debt charges are inequitable and contrary to the principles of justice. The reasons which brought about the ratification of the debt agreements no longer exist. The war-supplies debt has ceased to be an issue. The same is true of the connection established by the Young Plan between debts and reparations. The Young Plan is dead and no one seriously considers today the possibility of reviving it, although in theory this is still possible in case of the non-ratification of the Lausanne agreements. The same is true of the arguments used in 1932 to bring about the payment of the December installment. France cannot overlook the fact that in spite of Great Britain's paying her December installment in gold, the British emissaries who visited Washington after President Roosevelt's inauguration were unable to achieve any settlement except the highly unsatisfactory arrangement for "token" payments, which had to be abandoned after the passing of the Johnson Act. There is no indication that default has unfavorably affected French credit or relations with England. The attitude of the world toward the sanctity of international agreements did not suffer any conspicuous changes. The London Conference, from which so much was expected, proved a dismal failure. Whatever might be the merits of the American policy at London from the domestic point of view, Europe, and especially France, has failed to perceive them.

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The effects of Roosevelt's Tariff Act are uncertain and it seems extremely doubtful that it will bring any real relief to moribund international trade. The new Johnson Act will do little to impress European public opinion favorably; and it is unlikely that it will succeed in bringing France to her knees and force her to accept a revision, however drastic, of the Mellon-Bérenger agreement. Nor is there any indication that Congress and the President are contemplating any such drastic revision. The outlook is gloomy indeed. It would seem as if the United States and Europe were as far apart in 1934 as they had ever been in the post-war years.

It is not the purpose of this article to discuss the validity of the French claims or the soundness of the French contentions. Many of the elaborate legal theories devised in Paris cannot but strike one as preposterous. But that this frame of mind exists in France is a factor of far-reaching importance, which should not be overlooked.

It has been said that a survey of the reparations and war debts problem gives one the feeling of visiting a graveyard. It is with a sense of real and deep relief that one turns from this amazing and crumbling monument of human ingenuity to the simple and clear pronouncement issued by the British Government as far back as August 1, 1922. Great Britain, whose loans to her Allies very nearly doubled what she herself had borrowed from the United States, has been an early, consistent and, unfortunately, lonely champion of the all-round cancellation of war obligations. The Balfour note, which laid down the principles of British policy on this question, closed with the following appeal, which still retains all its force: "A general settlement [of war debts and reparations] would . . . be of more value to mankind than any gains that could accrue even from the most successful enforcement of legal obligations."

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DICTATORSHIP AND IRRESPONSIBLE PARLIAMENTARISM—A STUDY IN THE GOVERNMENT OF SWEDEN[1]

I. Introduction

"AS for democracy, why should we discuss acknowledged madness?" This phrase was spoken by Alcibiades near the end of the Peloponnesian War. We heard the like of it again in the Philadelphia Convention of 1787. It has returned today, and the volume of it is growing louder.

There remain some faithful voices. Nothing lies nearer to the life of modern democracy than the question whether these speak from insight: or rather, from a recent, shallow and sentimental tradition. It was Tocqueville who said that "the progress of democracy seems irresistible, because it is the most uniform, the most ancient, and the most permanent tendency which is to be found in history". Does the validity of this statement depend upon the meaning of the principal word? John Dewey has said that, "Regarded as an idea, democracy is not an alternative to other principles of associated life. It is the idea of community itself."[2] And again, "Democracy will come into its own, for democracy is a name for a life of free and enriching communion. It had its seer in Walt Whit-

[1] There is naturally an abundance of material written by Swedish scholars on past and present phases of the Swedish Constitution; with some of which the present writer became acquainted in preparing, some years ago, in fulfillment of requirements at the University of Oxford, a dissertation on *Parliamentary Government in Sweden*. One of the more recent works, however, relating to this subject may be mentioned as being of particular interest, even to the less specialized student of government—provided he is conversant with the language in which it is written: *Grunddragen av det svenska statsskickets historia* (*Principles of Swedish Constitutional History*) by Nils Herlitz (Norstedt & Söners förlag, Stockholm, 1928).

[2] *The Public and Its Problems*, p. 184.

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man. It will have its consummation when free social inquiry is indissolubly wedded to the art of full and moving communication". Dewey does not think, of course, that this ideal will ever be fully achieved, "unalloyed by alien elements."

We narrow the inquiry, however. Granted that all the talk about "the decline of parliaments" is not without cause, and not without reasonable anticipation of a more general decline in the not distant future, shall we consider this fact as evidence favoring the well known Spenglerian view, or as being rather a more temporary phenomenon than this would imply?

The purpose here is to call attention to an interesting history that may be thought to bear on this question, one not well known in the English-speaking world, and the significance of which has not generally appeared, perhaps, even to those who have lived in its midst. This is the somewhat unusual development of the constitution of Sweden—unique for its long and continuous history of learning the dangers of personal dictatorship on the one hand, and of parliamentary absolutism on the other. Next to the English, it is almost certainly the most historical constitution extant. More than the English, it offers an historical view of what may possibly be expected of the future in reaction to the rather irresponsible parliamentarism that has appeared in Sweden of late, as it has elsewhere. But I hasten to add that I shall indicate only the main outline of a history that is a thousand years long.

Professor Dewey believes—to call up one more thought from him—that time is much wasted in the use of the historical method, that history to be useful must be recent, anything else being rather for the sake of antiquity only. Doubtless the complaint is somewhat justified. Recency, however, is relative. It depends upon the problem with its living realities, whether the data most serviceable for its solution are to be found in the contemporary social statistics which are really the fine strands of recent history, or whether, again, we must rely rather upon the more comprehensive facts of history in its longer perspectives. The so-called sociological method is, after all, a specialized branch of the older historical tradition, necessary as a modern corrective of that tradition though it has proved to

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be. Answers to the more significant of political and social questions seem to require *both* the shorter, the more detailed, and the longer, view. And if, as we have heard, for example from Mr. Carl Becker, there is no such thing as objective history,[3] it is neither less nor more true that there is no such thing as objective sociology. History is but an extended view of what is called the present, and though no view of anything more than approximates to the thing itself, still, we live—corporately and individually—only as we extend ourselves by enlarging the view in every direction toward the outer sphere of things as they are.

Thus, perhaps, appears the background for observing the development of a political constitution, and in the present instance for seeing the significance, though not vaguely, yet in the very broadest outlines of its growth. In this instance, too, it should be seen that significance and insignificance are the more easily confused when it is not remembered that political science as such is only incidentally concerned with the imperialistic or commercial importance of countries. It is no great credit to the study of politics, *as a science,* that almost as a matter of course it should concern itself largely with the modern politico-economic giants, as if magnitude, rather than the nature and proportions of the elements, were the important thing about any scientific phenomenon. For the present purpose it is a small matter that when the beloved "Mad Man of the North" won a lion's share of Europe and soon, in his romantic way, lost it again, there went with his losses most of the international repute of his country from that to the present time.

II. Foundations of the Principle of Separation of Powers in the Swedish Constitution

The present written constitution of Sweden dates from 1809, being the oldest written constitution now in force save that of the United States. How far the influence of Montesquieu appeared in the political affairs of Sweden in the Reform of that year cannot here be determined. Swedish writers customarily describe their constitution as an ancient historical

[3] *The Heavenly City of the Philosophers.*

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growth, the four fundamental laws[4] that in 1809-10 were adopted and fortified against change through ordinary statutory enactment, being regarded as soundly founded upon native experience. On the other hand, recent research[5] has shown that if the *Esprit des Lois* had never been written, the thought of balancing the executive against the legislative power would not have occurred to the men of 1809, as it did, to be so obviously the proper solution. This has detracted somewhat from the conception that the constitution is a most historical one, but it should not detract too much. At least, the majority of the Constitution Committee who were responsible for framing the Constitution Act—as an act fundamental to whatever other organic laws might later be made—plainly professed in their testimonies to be thoroughly convinced that they were "building on native grounds", and to have learned from their own constitutional experience that a balance of power in the long run is safer than a very powerful monarchy, and safer than a predominant legislature.[6] We, perhaps, should be inclined to add, that this is true of a predominant legislature only when so organized as not to centralize responsibility for power; to which, however, an answer may be that a sufficiently centralized power becomes eventually an independent power. Whatever of that, and however much or little these men may have learned from Montesquieu, they certainly believed that they saw in the history of their institutions the only too eloquent evidence of the truth of his teaching; the reason of which may be briefly shown.

The earliest history need not be retold. Enough, it may be, to mention the meager story that we possess of the age of folk wanderings and of that primitive democracy which never quite completely died out in Sweden—not even in feudal times; of the supposed beginnings of the gradual unification of the

[4] These are the Constitution Act, the Organic Law for the Organization of the Riksdag, the Act of Settlement, and the Law on the Freedom of the Press.

[5] Axel Brusewitz, *Studier över 1809 års författningskris.*

[6] This view is fully stated in the formal Memorial adopted by the Constitution Committee of 1809, printed in Pontius Fahlbeck, *Regeringsformen i historisk belysning*, pp. 279-88.

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provinces into a national unity, a loose union having been established probably by the beginning of the eighth century; of the first monarchy over the united provinces—a kingship hereditary within the Ynglinga family, though without any fixed order of succession; of the transition at the extinction of the Ynglinga family from the partially hereditary to the purely elective principle of kingship; and how the earliest kings were chosen not by the entire kingdom but by the Swedes alone, a circumstance which appears to have been not entirely satisfactory to the other main branch of the kingdom—the Goths—and which may have been the cause of that fierce strife between the Swedes and the "Geater" (were these the Goths?) mentioned in *Beowulf;* how a rather formless king's council developed into the Herredag (the Diet of Lords) which became, in time, the Riksdag (the National Assembly), somewhat as in the growth of the English parliament; how in the thirteenth century a close coöperation between the church and the aristocracy in support of the king strengthened the latter's position and expanded his powers; how through the centralizing influence of Birger Jarl, father and maker of kings, a system of national laws grew up preparing the way for the great codification of the fourteenth century that consolidated provincial and city laws in a careful compilation which was to remain in force until 1736; how the increasing power of the king remained for long definitely limited by law and embodying the principles of a limited monarchy, fundamental parts of which had existed even in the days of barbarism; and how during the defensive Kalmar Union, under a joint monarchy between Sweden, Denmark and Norway, lasting during the later Middle Ages through more than a century and a quarter—how in these days Sweden witnessed a rise of aristocratic power in the council and in the Herredag, which was to become directed more and more against that of the monarch who usually was resident in Denmark; these matters may suggest in part the origins of what has been called the ancient dualism of the constitution, the dual power of monarchy and the representation.

Throughout the Middle Ages there prevailed the conception of a balance of power between the people and the king that

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was enforced by law. Every king upon election was required to give oath to the people in terms specified in the law, while the law laid down the limits within which royal authority must be exercised; and the "commonalty" in turn—through its "lawmen"—must swear allegiance to the king. These mutual oaths established a definite legal relationship between the king and his subjects. They were not a mere matter of form. Not seldom a king was removed for having broken his oath, not as a revolutionary act but as a legal proceeding.

Near the close of the Middle Ages came a marked change in the political condition of the country. When Gustavus Vasa, completing the work of Engelbrekt and of the two Stures, freed Sweden from the control of Denmark, and in 1523 himself ascended the Swedish throne, the royal power became greatly increased. Due to the genius and the influence of Vasa, the kingship assumed under him the hereditary character which it has since retained. In theory, there remained the ancient rule that the king is subject to law, but the circumstances of the time made this of little consequence. The country had need of a strong king. Gustavus, eminent for ability and strength of will, had the prestige of having been his country's liberator. Coveting for the state the revenues of the church, he confiscated the ecclesiastical lands. Introducing the Protestant Reformation, he made himself the head of the church—against the opposition of the aristocratic party. Using as a means, moreover, his severance of the Roman ties, he secured for the country a financial independence of the great cities of the Hanseatic League and a place of importance in the European state system. His practice according well with the divine right theories of Lutheran Protestantism, Vasa became a ruler as absolute as Sweden has ever had, and this with the fullest concurrence of most of his people.

But a strong and wise father frequently transmits to his sons less of his wisdom than of the advantage which he has gained for them. Royal authority of the Vasa line met soon with opposition from the Council. The estates, too, increased in power and defiance. Their representatives had met only irregularly, sometimes as the Herredag, again as the Riksdag

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including members of the lower as well as of the upper estates. The convening of the Riksdag, promoted originally by the king rather than by the estates, now became, at the demand of the estates, more and more regular. Before long it had gathered to itself added power over taxation and legislation—power that formerly had been divided between the old Herredag, the Council and the provincial assemblies, power that originally had all belonged to the provincial assemblies.

Then, in the seventeenth century, under the reign and leadership of one of Vasa's grandsons—the "great in peace as in war" Gustavus Adolphus—the Riksdag became definitely organized by law. The Organic Law of 1617 was made now to provide that the four estates should meet separately, and so consider their business. This they did until the present bicameral system was established in 1866. The seventeenth century brought, moreover, the basic development of a system of parliamentary committees which remains to this day one of the prominent features of the Swedish constitution. Altogether the Riksdag rose to a position of some power and dignity at a time when throughout most of continental Europe the influence of the estates was breaking down.

This was not a democratic movement. Rather it was a rise of aristocratic influence, due in part to the prolonged absence of the king, as the hero of Protestantism, in the religious wars of Europe. This tendency appears, for example, in the Statutes of the Nobility (1626) giving special recognition to the powers, privileges and organization of the highest estate. The Constitution of 1634, adopted a few years later, and in which, quite soon after the death of Gustavus Adolphus, the changes of his reign became codified, has in it a frequently cited passage which interestingly defines the different elements of the state as these were regarded at this time: "A well regulated state", reads the text,[7] "is that which assures to each power that which is its due: to the King his majesty, to the Council its *authority* [italics ours], and to the estates their independence and their legitimate rights".

[7] Quoted in Fahlbeck, *La Constitution suédoise et le parlementarisme moderne*, p. 33.

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Opposed, in a way, to this largely upper-class order of the estates, was the royal power, self-assertive, though remaining definitely subject to law. Here was a balance of the constitutional powers, soon to be upset certainly but which more than a century later was to be thought worthy of revival. Here at least, if not earlier, may be seen the roots, so far as the Swedish constitution is concerned, of the idea which Montesquieu after all may have had some little reason to detect in the English constitution.

The half-century following the death of Gustavus Adolphus marked a continuation of the growing influence of the nobility, especially during the regency before Queen Christina's coming of age. The provincial assemblies were abolished. The estates received a new authority. Essentially the government remained a limited monarchy, the executive power balanced by the authorities of the representative bodies. Incidentally, there developed in the time of Gustavus Adolphus and of his immediate successors—at the hands of aristocratic office-holders—a high degree of administrative efficiency.

The balance of the constitution was not maintained in the succeeding period from 1680 to 1719, during which on the contrary the growth of the monarchical power culminated in a theory of absolutism quite in accord with the conception of political authority prevailing in Europe at this time generally. The landed aristocracy had become oppressive. The poor had turned to the king. The absolutistic views of Filmer and of Hobbes were in the air. No longer could the power of the king be held to its own by the aristocratic and self-sustained Council of State, which is traditionally regarded as the source of the Riksdag, and which during the insecure youth of the Riksdag had been the guardian of its rights. The king, in the person of Charles XI, found ways to diminish the influence, not only of the Council, but also of the nobility in general—by the expedient, chiefly, of abolishing a variety of semi-feudal privileges, and of confiscating a great amount of land which in former times royal favor had bestowed. And having weakened the power of the Council, he found it easy to reduce also that of the Riksdag, acquiring for himself much of the legis-

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lative power of that body and a large measure of control over taxation. In the time of Charles XI the Riksdag was ready to subscribe to the Declaration of 1680 which transformed Sweden from a limited to an absolute monarchy.

This state of things was continued under Charles XII, in whose reign, indeed, the Riksdag was convened only twice, once in order to declare the king to be of age, and once later when the absence of the king allowed that it be summoned on the authority of the Council. The dictatorship of Charles XI had arrived with a popular support; that of Charles XII—beloved as he was by the broad ranks of his countrymen—became a military despotism directed against the people.

The eventually disastrous results of the foreign campaigns of Charles led in the year 1718 to a revolution in the form of government, whereby the relative positions of the monarch and the Riksdag were completely reversed. There began the "Era of Liberty" characterized by the dominant power of a complexly organized Riksdag. The estates rose to their full stature, less, however, as representing the consent of the governed than as the defenders of ancient legal right. The courts in a measure resumed their formerly independent position, though not free from interference by the estates. The administration fell wholly under the control of the estates, this control being centered somewhat in the authority of the famous, secret, joint committee, which had been created nearly a century before and which included in its membership representatives only of the three upper estates. Henceforth the Riksdag was summoned at definite periods (every three years). The constitution of the three estates was more precisely fixed by law than before. The committee system was arranged in a way that was to become basic for its future growth.[8] The king became nearly a figurehead, his counselors the agents of the estates. Because of the necessarily complex organization of a system of committees operating throughout the four distinct chambers—three of which must usually concur, and sometimes all four, for the

[8] O. Varenius, "Sveriges författningshistoria, *etc.*", *Statsvetenskaplig tidskrift*, Dec. 1913.

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purpose of legislation—authority was much diffused and responsibility largely lost.[9]

Yet there was some semblance of party responsibility. Bitter strife developed between the two main and longest-lived of the political parties—the conservative, so-called "Night Caps", and the chauvinistic, Francophile "Hats", who desired revenge upon Russia. This eighteenth-century parliamentarism seems not unfamiliar to us. The parties were alternately in control of the government, i. e. of the king's counsellors, and, more particularly, of the Secret Committee. The prominent leader of the Caps, Count Arvid Horn, sometimes was referred to, even in that time, as Sweden's first prime minister. Somewhat of the spoils system was introduced. Elections of the representatives in the estates were corrupted by campaign funds, these being sometimes filled from foreign sources. There appeared extensively the principle that the electors had power to bind their representatives by instructions.[10] Due to the party strife, to hopeless dissension between the estates, to the darkest of secrecy in the processes of the Riksdag, to a disastrous war with Russia, and to the threat of further dangers from without lurking in the unlimited campaign expenditures supplied by the mutually antagonistic French and Russian diplomacies, it was seen at length that the absolutism of the estates must cease, and in 1772 another revolution ended the "Era of Liberty". It had been a time of political ineptitude, yet of marked cultural distinction.

Gustavus III, who was to bring much of French influence into Sweden, came to the throne intending that his government should be a compromise between the excessive power of the estates in the "Era of Liberty" and the absolute monarchy which had gone before. It now became the fashion to speak highly of the constitutional balance of the time of Gustavus Adolphus. As to how nearly that ideal was approached at the beginning of the reign of Gustavus III, and consequently as to whether the modern phase of the Swedish separation of

[9] *Cf., e. g.*, Herlitz, *Grunddragen av det svenska statsskickets historia*, pp. 148 *et seq.*

[10] *Ibid.*, pp. 150 *et seq.*

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powers should be dated from the close of the "Era of Liberty", or from the later date of 1809, there may be a difference of opinion. But it is undisputed that the monarchy of Gustavus III outweighed the estates, as the later monarchy did not.

Gustavus, having disregarded, however, most of the rich constitutional development of the "Era of Liberty", soon encountered opposition in the Riksdag. As often in the career of a determined man, the fact of opposition somehow gave to him the opportunity to increase the advantage which the revolution had brought him. During the war against Russia and Denmark (1789) he managed still further to increase his authority. Henceforth, not only did he alone decide when the estates should convene, but, using the right, which his friends alleged for him, of determining the number of councillors, he fixed it at nought. The once powerful secret committee of the estates was abolished. Administrative and quasi-legislative powers were transferred from the estates to the king, though in some respects the powers of the estates were actually increased. Begun as a counter-weight of power against the estates, due in considerable measure to the often critical state of affairs with Denmark and with Russia and to the consequent need for concentration, the monarchy became, especially after the Act of Union of 1789, one of semi-absolutism.

After Gustavus had paid for his growing power with his life, at the hand of assassins, it remained for his melancholy, somewhat incompetent son, Gustavus IV Adolphus, to proceed through a series of blunders ending in another constitutional revolution, 1809.

Considering the sequence of events that has been indicated, it does not seem strange that the men of 1809 should have sought to establish an equal division of power between the king and the estates. Each in turn, unrestrained, had governed unwisely, the former with iron, the latter with the hand of debauchery. The king's power must be circumscribed; the people's representatives must be restrained; that was the lesson of history. That was why the Constitution Act took the form of a contract between the king and the estates—though fundamentally it was rather less a contract than an expression of the

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will of the estates, for Charles XIII became king only on condition of his accepting the arrangement.

It is unnecessary to enter at length into the recent controversy between conservatives and liberals in Sweden as to whether or not the separation of powers in the Constitution of 1809 was a consequence required by the history of the country's institutions. Conservatives, opposed to the development of parliamentary government, have contended that Swedish history certainly pointed to a balance of power, and that the men of 1809 intended to follow this lesson. On the other hand it has been clearly shown [11] that a section of the liberal opinion of 1809 wished to arrange for a predominant legislature, and this evidence the modern Liberals have used, urging that there is a legitimate difference of opinion as to what the lessons of history really teach. The doctrinaire influence of Montesquieu, it is said by these, played unduly upon the majority of the Constitution Committee of 1809.

Whatever of this, it is clear that the Act of 1809 embodies the principle of separation of powers—not, to be sure, in the closest accord with the teaching of Montesquieu, rather as a compromise in some proportion between Montesquieu and history. Legislative power was not, as Montesquieu's formula would have required that it should be, reserved for the Riksdag and executive power for the king; but the power of the king, comprising the main portion of the executive together with a degree of the legislative authority, was balanced against that of the Riksdag, the latter comprehending, conversely, most of the legislative and a part of the executive power. For example, in a special quasi-legislative field called "economic and administrative legislation" the king was given sole authority; while in the control of the Bank and the National Debt Board the Riksdag was given administrative as well as legislative power. The departure from Montesquieu notwithstanding, we may characterize the constitution of the first part of the nineteenth century with the late Professor Fahlbeck, who wrote too late of it in 1905, contending vainly against the

[11] Brusewitz, *op. cit.*, p. 110.

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parliamentarization that already was on the way: "*Le partage du pouvoir entre le roi et le Riksdag, voilà, en deux mots, le trait fondamental de la constitution suédoise*".[12]

Fahlbeck emphasized a dualism rather than a three-fold separation of power. Considering, however, not merely the provisions of the Act of 1809, but historical realities more nearly in their entirety, especially the progressive development of the constitution after the revolution in 1772, and more particularly still, recent changes that have occurred since the time of Fahlbeck's observation, the judiciary appears increasingly as a separate department of the whole. Facts and authorities could be quoted upon this point, were it sufficiently close to our thesis to do so.[13]

The judiciary has not, to be sure, grown to such independence and privilege as to possess the right to pass judgment on the constitutionality of acts of the legislature, a function similar to this being exercised, instead, through a quasi-judicial arrangement in the Riksdag itself; but it has acquired an independent influence sufficient to support the phraseology in the Memorial of the Constitution Committee which drafted the Constitution of 1809.

[12] Fahlbeck, *op. cit.*, p. 99.

[13] The following by an authoritative writer (Georg Andrén, "Konstitutionalism och parlamentarism", *Svensk tidskrift*, 1930, no. 3, p. 159), may be given as a good summary of this development: "The judicial functions, more than at first, have been relegated to the courts, especially in the establishment in 1909 of the High Administrative Court, which, to a large extent, has relieved the executive of the burdensome administrative appeals. The division between the judicial and the other organs of the state has in general been made stricter than the Constitution of 1809 intended. Since 1840 no councillor has sat as member of the Supreme Court . . . votes, indeed that were no longer exercised. Since 1865 the Supreme Court has not had to give declaratory opinions. . . . And by the establishment in 1909 of the Council of Law the former was relieved of the duty of advising upon matters of legislation. Furthermore, His Majesty's power to appoint the justices has no great importance, appointments to vacancies in the court being filled in accord with advice given by members of the court itself. So far as the judicial power is concerned, therefore, the principles of 1809 have been realized to a high degree; judicial affairs have been isolated from influence from the other organs of the state."—*Cf.* also Herlitz, *op. cit.*, p. 212.

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> The Committee has sought to erect an executive power operative within prescribed forms and possessing unity of will together with ample means to carry it out; a legislative power, wise and deliberate in initiative, strong and firm in resistance [to encroachment]; a judicial power independent but not governing above the law. It has tried to direct these authorities to a mutual watchfulness and mutual restraint without confusing their powers. . . . The constitution which the Committee has proposed finds its basis in the separate purposes and the mutual checks of the authorities of the state.[14]

This is the present constitution of Sweden, upon which, however, the parliamentary way of government has been grafted, in what manner and with what success we may proceed briefly to inquire.

III. The Growth of Parliamentarism

Fahlbeck's almost violent opposition to the recent trends of the Constitution, as expressed in his *La Constitution suédoise et le parlementarisme moderne,* contrasts with the views of an earlier authority upon this subject. Rydin wrote in 1876 that "although all kinds of parliamentary government were foreign to our fundamental laws as these are at present literally and legally construed, yet it should not for this reason be imagined that it will be impossible to develop some such kind of government while retaining these same fundamental laws".[15]

"Some such kind of government" has now developed, though die-hards have not been lacking either among writers or among practical politicians.

The ancient rule was embodied, and to this day remains, in the Constitution Act, that "neither may the king make any new law nor abrogate an old one."[16] The letter of this Act, moreover, supplies a link as between these authorities in the provision that the executive power shall be exercised in the light of the advice of ministers appointed solely on the discretion of the king; but through a unique device, the fading im-

[14] Appendix in Fahlbeck, *Regeringsf. i hist. belysning,* p. 280.

[15] "Om det parlamentariska styrelsesskicket *etc.*", *Svensk tidskrift,* 1876.

[16] Art. 87.

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portance of which would exclude consideration here, they are to be responsible also to the Riksdag. Essentially they were meant to be the king's ministers.[17]

Almost at once after the adoption of the Act of 1809 friction arose between the king and the estates. Clason, an historian of no radical tendency, describes the situation as follows:

> . . . a natural fault in the Constitution was the thorough dualism of power as between the king and the Estates. They could counterbalance each other, but there was little tendency toward mutual trust and coöperation. The king and the Estates were set against each other almost as if they were the representatives of two mutually mistrusting powers suspected of constant inclination to trespass upon each other's province. . . . Intimacy between them was not even intended; after the Government had laid a proposal before the Estates, official co-

[17] The device referred to results from provisions in the Constitution Act (Articles 105, 106, 107) commanding the regular Constitution Committee of the Riksdag periodically to inspect the minutes of the Council proceedings, and to report its findings, with the object of enforcing a ministerial responsibility to the Riksdag. Responsibility is of a dual kind. If a councillor is found to have violated either fundamental or statute law, or to have failed to express disapproval of similar misconduct on the part of the king, the Constitution Committee shall accuse him before the High Court of Justice. Thus is *juridical* responsibility exacted. But if it is found upon examination of the Council minutes that corporately or individually the councillors have failed to advise that which is "the veritable good of the kingdom", or that any one of them has not filled his office with "impartiality, zeal and competency", the Committee shall so report to the Riksdag, whereupon the latter may petition the king for the dismissal of any minister concerned, thus imposing upon the ministers a *political* responsibility to the legislature. According to the letter of the Constitution Act the king may or may not comply with such a petition. In practice he would no longer consider refusal. Indeed, although this procedure still is referred to as a device of Swedish democracy, it is no longer actually of great importance. The minutes examined by the Committee pertain only to the formal meetings of the Council, not to the informal sessions where the affairs of state are really considered and decided upon. And, too, minutes of the formal meetings contain only brief, topical sentences, much too meager to supply any real revelation. The chief service of the Committee's report is to start a debate in which parties may announce their viewpoints on various matters, or in which some real issue may be joined; while the real securities for the political responsibility of ministers "are the political elections, the consideration and outcome of the more important questions in the chambers, and the like. . . ." [Edén (Liberal ex-premier), Debate in the Lower Chamber, 1917, No. 63, p. 13.]

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> öperation was altogether absent. The estates, "wise and deliberate in initiative, strong and firm in resistance" [these are the words of the Constitution Act], were easily tempted to indulge in fruitless criticism, and never to take positive action unless, perchance, too late to be of any avail.[18]

This state was hardly satisfactory to the liberal elements in the Riksdag, whose program consequently came to be—throughout the entire reign of Charles XIV (1818-44)—parliamentarism.[19] About 1820 there appeared in the press an active propaganda in favor of their views, which ripened in the thirties into practical influence upon politics,[20] and which had for its object the complete abolition of the system of estates, with the retention of which—in their four chambers—parliamentary government could hardly be made compatible.

In 1840 a change of some importance was achieved. The movement fell short of its object, but succeeded to the extent that it made seven of the members of the Council heads of a corresponding number of administrative departments, thus modifying the independent position of a considerable part of the administrative bureaucracy. And it was part of the same trend that in the same year and for the first time the councillors resigned from their places for lack of support by the estates, to be followed by a new ministry who were to gather themselves about a definite program formulated with some view toward complying with the wishes of the Riksdag.[21]

The liberals had the English ideal in mind. Yet the Reform of 1840, paradoxically enough, was the beginning of a certain reaction against the English cabinet parliamentarism. In the political discussions of the thirties the Conservatives, having seen that some fundamental change was inevitable, had begun to advocate the American system of two chambers of equal strength, and in the session of 1840-41 the Moderate-Liberals,

[18] Clason, *Sveriges historia.*

[19] *Cf.* Rexius, *Det svenska tvåkammar systemets tillkomst och karaktär*, p. 9.

[20] Ivar Anderson, *Oppositionen och ministeransvarigheten. Parlementariska strömningar i svensk politik, 1809-1840* (academic dissertation, 1917), pp. 63 *et seq.*

[21] A. Brusewitz, *Forum* (Swedish) 1915, p. 302.

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too, gave their adherence to the principle of bicameral equality. The movement culminated in 1866 in a reform the most considerable of any since 1809. The estates were dissolved and in their stead were set up two coördinate chambers equal in power.

To mitigate the force of possible conflict between the chambers, provision was made, first, for retaining the joint committee system of the estates, and also for joint voting upon all questions of disagreement relating to finance.

The fact is clear that the idea of two equal chambers, the lower directly and the upper indirectly based upon the choice of the electorate, was in some measure due to American influence.[22] But the primary object—and a principal result—of the reform was to obtain better coördination than had previously existed between the executive and the legislative organs of the government. The more simplified form, and the occurrence now of annual sessions, of the legislature, made coöperation with the Council more feasible than before. We see the beginning now, and even before this time, of a growing unity of the Council, together with increasing independence of the Crown. Though it has not yet an organized parliamentary base, from the middle of the fifties there is common talk about the ministry as a perceptible unity. The choice of its personnel more and more devolves upon the leading minister, and with growing independence of the king.

A definite step in this direction was the ministry of de Geer. Against the opposition of the king, it put through the highly significant Reform of 1866.[23] Henceforth, the center of the administration moved gradually from the king to his ministry, while more and more the personal interests of the titular chief shifted from his political surroundings to the circle of his private friends.

The effect, moreover, of a law passed in 1860, permitting ministers to appear in the meeting of the estates, had been

[22] *Cf.* G. Rexius, *op. cit.*, especially pp. 121-249, and the concluding chapter, p. 305.

[23] *Cf.* Memoirs of de Geer as quoted by N. Alexandersson, *Forum* (Swedish) 1915, p. 437.

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to increase the control of the legislative bodies over the executive, though in part the aim in the making of this statute had been to strengthen the Council as against the Riksdag.[24] And when, in 1876, a law was made creating the office of prime minister, in order to provide for an official head of the actual government who would no longer have to possess the special administrative qualifications hitherto required of the factual first minister (the minister of state for justice) the motive here again was to strengthen the government so as to prevent the growth of a parliamentary domination like that of the Era of Liberty. There was no intention further to reduce the responsibility of the monarch: yet this was precisely the result.

In 1880 occurred the earliest Swedish example of clear parliamentarism. In that year the ministry dissolved the lower house on the question of the tariff, then, after the election, upon an adverse joint vote of the chambers, corporately resigned, whereupon a new ministry was constructed upon the basis of the vote in the Riksdag.

Parliamentary government could not yet be said to have broken through. A number of ensuing ministries were supported in power by the king with the aid of the upper house, not only without the approval of the lower house, but even in face of hostile majorities in the joint votes of the chambers. Until 1905 a large proportion of the ministers were still of the bureaucratic rather than of the parliamentary kind. The king was able, still, to exercise considerable discretion in the appointment of ministers. Often there was friction, and only in the long run a vague correspondence, between the policy of the government and the will of the Riksdag as a whole.

Indeed, the will of the Riksdag as a whole was difficult to ascertain. It functioned often not as a whole, rather as ill-matched halves.

[24] Fahlbeck argued in 1905 (*La Constitution suédoise, etc.*, p. 96) that the effect of this reform was not in keeping with the dualistic tradition of the constitution, but dissent from this view has increased among Swedish scholars in the most recent decades, as appears in the writings of Brusewitz, N. Alexandersson, N. Herlitz and others.

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The Liberal Party aimed at ministerial responsibility solely to the lower house. In 1905—the year of the peaceful break with Norway—Premier Staaff succeeded in forming a homogeneous Liberal ministry based upon the support of the lower chamber alone. This government marked, rather definitely, the end in Sweden of the bureaucratic type of ministers, and only quite recently it has become general on all sides to regard it as having definitely signified the advent of a really parliamentary form of government, though hardly one of the English type. But with respect to lower chamber supremacy, this instance failed to become a precedent. Many of the subsequent ministries have existed without the confidence of the majority of the lower house—though in general, they have had the support of the *joint* majority, and usually clearer party complexions than had those which preceded 1905.

Why did the victory, in that year, of liberal politics—the victory of the Liberal Party, aided by the Social Democrats—fail to establish a ministerial responsibility to the lower house alone? Primarily, because these parties did not control the conservative upper house, without whose consent the fundamental law could not be changed. A different kind of democratization was to prove easier.

The electoral reform of 1918-1921 came as part of the World War victory of constitutional democracy. From 1914 to 1917 the support of the king and of a majority of the upper chamber had kept in power a so-called bureaucratic—essentially a Conservative—ministry, opposed by the Liberal majority in the joint votes of the Riksdag. This of course seemed wholly wrong to the Left. At length the victory of the Allies gave to liberal politics in Sweden a moral strength which succeeded in democratizing the upper house, and in reasonably harmonizing the views of the two chambers.

They were not made identical. The overlapping eight-year terms of office in the upper house, its smaller membership, the system of indirect elections, the traditions of distinguished personnel and of a relatively mature deliberation, are thought to justify its separate existence.

The fact that the Crown may dissolve either chamber or both,

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and that what is approximately the same electorate in the end controls them both, means that the two legs of the cabinet no longer strive persistently in opposite directions. The Social Democrats appear definitely to have removed from their program the aim of abolishing the upper house. The present-day descendants of the Liberal Party (this middle-class group having split—and, incidentally, having suffered in strength, as have the middle classes elsewhere) no longer talk about lower chamber supremacy. All parties participate, with more or less good grace—though none too happily—in the parliamentary game.

But it is not played here as it is in England. Among the differences, first and foremost is the relative weakness of the Swedish ministry, which is due to a variety of causes, and not only to the multiparty system which since the war has replaced the former three-party system. A contributing factor is the very limited administrative authority of the individual ministers. These have been made heads of departments, it is true, but to a very large extent the ancient collegial administrative offices have retained their independence,[25] while in England each minister of course is fully in control of his department. Also, the ministers, individually and collectively, exercise far less direction over the work of the Riksdag than do the ministers in the English parliament. There is in the Riksdag a thoroughly organized system of committees functioning almost as a second government. The Swedish system has been called a "committee parliamentarism".[26] As in the state of Massachusetts, the standing committees of the Riksdag are composed jointly of members of the chambers, though differing from the Massachusetts plan in that each chamber is equally, and each of the parties in the Riksdag proportionately, represented in each committee. There are seven of these, including the especially powerful Committee on Finance[27]—all of them provided for in the Organic Law for the Organization of the

[25] See, for example, Herlitz, *op. cit.*, p. 274.

[26] Brusewitz, *Utskottsväsen och parliamentarism.*

[27] The seven committees are those on Finance, on the Constitution, on Taxation, on the Bank, on Agriculture, and two on Legislation.

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Riksdag, which, it is to be remembered, is one of the four fundamental laws exempted from modification through ordinary legislative enactment. Further, there is stipulated in this act the number of members to be elected to each committee and the nature of questions to be referred to each. The Riksdag is not at liberty to decide concerning any proposal whatever, the consideration of which, according to the Organic Law, properly belongs to one of the standing committees, without having referred it either to that committee or to a special committee which the Riksdag in some cases may appoint. Committee memberships, and especially chairmanships, have become highly coveted positions.[28]

Not only are the private members' motions and the Government proposals nearly always referred to the standing committees; these have also their own right of initiative expressly extended to them in the Organic Law. The Constitution Committee, for example, may propose amendments to the fundamental law and to specified other important statutes. The Committee on Taxation has the right of initiative in all matters with which it is in any way concerned.[29] Thus of the others, their right of initiative is protected by the fundamental law.

Whatever and whenever they report—for although they are

[28] The interest that members take in their work indicates the importance of the committees. Probably they are somewhat more expert than those of the American Congress. Both inside and outside of the chambers they are recognized as possessing good experience, each in its field. Each has a fairly continuous, therefore experienced, membership, due not only to the custom in the chambers of electing, from one session to the next, members to those committees in which they have previously served, but also to the use, in choosing the committees, of one of the methods of proportional representation, so that a change of party in power commonly does not drive the leading men of the opposition out of their committee positions. Indeed, it is seldom that the majority of the members in any committee are new to the task. A great many of them remain at the same post ten, fifteen or twenty years. In addition to the standing committees there are certain "special" and "temporary" committees, of relatively less importance.

[29] On the other hand, the Committee on Finance, strangely, is without right of initiative, though it may revise, either upward or downward, items of expenditure as proposed by the Government or by individual members of the chambers.

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obliged to report to the chambers upon all matters sent to them, the time for their doing so is at their own discretion—it is likely to be supported by the chambers.[30] Especially is it so when, the chambers having failed to agree, it is the duty of the committee which has the matter in charge to try to mediate—to do so, moreover, upon its own initiative.[31]

Much could be said as to the merits of the committees. They are, however, a source of weakness to the ministry. The guiding function of the Government, and its unity of policy, often are not maintained. Absence of ministers from the deliberation upon their proposals in the committees, from whose meetings they are constitutionally excluded,[32] denies to them a sufficient continuity of leadership in carrying out the legislative program to which the party or parties in power may be pledged. Government proposals, as these emerge from committee, often have been so changed as to make impossible the assessment of responsibility. We should exaggerate to say that the committees may amend the Government proposals at will. The rule is, that committees are considerably more restricted in the amendment of Government proposals than of private members' bills. Still, often enough they harass the Government. Often they defeat the ministerial plans. The ministry would enjoy more of the respect and the confidence to which leadership is entitled,

[30] The minority report of the committee may be preferred to that of the majority, and in the event that the Government should disagree with the majority of the committee, is rather likely to be preferred. More often than not the Riksdag accepts the view of the committee.

[31] The methods employed are various. Sometimes the committee proposes a compromise. Sometimes it will urge that the one chamber entirely surrender its position and join with the other. If, in spite of the efforts of the committee, the chambers do not agree, of course the matter must drop—unless the question, having reference to finance, requires resolution by means of the joint vote. *Cf.* P. O. Gränström, *Om formerna for behandling af skiljaktiga beslut*, p. 63. Also Malmgren, *Sveriges grundlagar*, p. 146, note 7.

[32] Through the bonds of party organization, of course, the Government to some degree controls the committees. It is usual for the ministers to see the committee proposals before these are submitted to the chambers, and to confer informally with leading committeemen. *Cf.* L. Kihlberg, *Ministeransvarigheten* etc. See also a statement by ex-premier Edén in *Forum* (Swedish) Sept. 1920, p. 435.

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if somehow it could disregard, more than it does, the age and the self-esteem of the Riksdag committees.

As related to this point the fact may be mentioned that "minority government" has become the normal thing. More often than not, neither a single party nor a coalition of parties has the support of a *regular* following constituting in itself a majority in the joint votes. Yet ministries have not fallen so frequently as in France. They have attained a certain duration on the basis of amazingly small regular support. The Ekman Liberal-People's Party coalition of a few years ago was maintained in power by a following of about fifteen per cent of the lower house and of about seventeen per cent of the two chambers combined. Later, in 1929, Ekman with the People's Party alone formed a government with even smaller support. These were center parties. "Center Parliamentarism" has prevailed, based, as it has been, upon a subtle holding of the balance of power in the Riksdag, and on obtaining its evanescent majorities now here, now there, or else existing solely by the tolerance of party leaders who could see no other way out.

In the sense that the Riksdag ultimately determines the fate of ministries, parliamentary government exists in Sweden. Parliamentary government of a kind has been developed upon a long tradition of separation and balance of powers. However, as the history of the constitution goes, is this a very new phenomenon?

IV. Conclusion

Professor Fahlbeck, some thirty years ago, was not entirely in error in his warnings [33] of the approach of an irresponsible parliamentarism. To wish, as he did, to stem the advance of political democracy was a futile thing. But to indicate emphatically the evils of a too diffused authority, under a too dominant Riksdag—evils that have been proved in the history of the Swedish constitution as they have been proved elsewhere—was a useful warning of the kind that today is familiar throughout the western world. The ministers, it is

[33] *La Constitution suédoise etc.* 1905, and other writings.

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true, are not at the present time merely the agents of the Riksdag, as were both the ministers and the king in the Era of Liberty; a degree of ministerial leadership has emerged, enough to prevent meddling by the committees and by group formations in the chambers with the various non-legislative phases of government, such as once before already had brought the country almost to destruction when the Revolution of 1772 called a halt.[34] Nevertheless, politicians together with their critics in the Swedish community begin, rather generally, and of nearly all parties, to consider that the responsibility of their political leadership is not sufficiently concentrated to withstand very well the threat of chaos. If, eventually, it should prove unable to do so, then as heretofore, it will be followed by absolutistic reaction.

Who has not observed the oscillations of political history, if not in the more comprehensive tides of constitutional reforms, at least in the pulsation of alternating parties in power? The actual forward movements are not smoothly continuous; they go in halting and surging ways. There is always danger of excess in one direction or another. Conscious and intelligent direction implies a control, neither too far right nor too far left, neither driving too hard nor restraining too much, so that the force that is more than men will not throw them over-much.

The world is of course never such as it was at any preceding time. Economic forces, it will be said, make demands upon government now that have never been made before. Granting so obvious a fact, the swing of the pendulum toward constitutional centralism, and away again, may be observed in preceding centuries that have had their own social and economic changes, of which changes some, likely, were as deep and as

[34] "Unmistakable," says Professor Herlitz in his *Constitutional History of Sweden* (*Det svenska statsskickets historia*), "is the difference between the present Riksdag supremacy and that of the Era of Liberty. The provision of the fundamental law which forbids the Riksdag to have anything to do with the appointments or renewal of civil officers and servants, with administrative and judicial decisions and resolutions, with the affairs of individual citizens and of corporations, with the execution of law . . . this is not a dead letter." Professor Herlitz would concede, however, that a certain danger lies in this direction.

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significant as that which is bewildering the present generation. One may not count too confidently on regularities in the reactions of social and political movement; yet something may be ventured.

The dominant power of the Swedish Riksdag with its committees, it may be said, is nothing very extraordinary among modern parliamentary governments. True—very true. Does its relationship to historical antecedents, however, set in relief, somewhat, a fact that none of us at the present moment can too much insist upon, that the way to save democratic institutions is to have these imitate before it is too late the virtues—though not the faults—of their opposite? That arch-democrat, Rousseau, in the interests of democracy defended dictatorship as the proper means when occasion should require. And even in normal times, doubtless the more inclusive a political society, and the more numerous its interstices, the greater the need for gathering its numerous threads. If democracy cannot do so, we may look for it to be superseded. Fascism, it may be, of a kind destructive to democracy, is inevitable if quick steps be not taken toward concentrating the purposes of democracy, and toward sharpening the democratic instruments. The thought of fascism—though in a very small kernel, to be sure—has appeared in Sweden, too.

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INTERNATIONAL SANCTIONS: TWO OLD VIEWS AND A NEW ONE

NOTHING has so divided the friends of international peace as the question of sanctions. In fact this disagreement has almost nullified their efforts. Two general views have been in conflict since the close of the World War. Both of them ignore certain important aspects of the problem. My purpose is to examine these two attitudes in the light of recent history, to point out some of the merits and limitations of each, and to develop from this criticism a more realistic and comprehensive way of looking at the matter. While this third attitude seems more or less consciously to be actuating responsible leaders in various countries, I have not found it clearly formulated.

The Variety of Sanctions

Something should be said at once about the meaning and scope of the term "sanctions". A sanction is any reward or punishment that a group uses to secure the obedience of its members. When ex-President Taft was making speeches in favor of the League of Nations several years ago, it is said that he used to hold up his large fat hand to illustrate an effective sanction in the home. Though he meant spanking, he might just as aptly have referred to the caresses of the same kindly paternal hand. In church Heaven and Hell are the time-honored sanctions. And sanctions in the civil community range all the way from the gallows or the Presidency to what the neighbors think about us.

With reference to the society of nations that has been slowly developing for several generations, one hears also of a wide variety of sanctions. Some are in actual and frequent use and others are only proposals. At one extreme is the idea of an international army of some sort. Much less novel is mutual

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military assistance. It has been used in the past against nations which were generally considered to be aggressors, France under Louis XIV, England in the 1770's and 80's, France again under Napoleon, Russia in the Crimean War, and Germany a few years ago. The fear of such concerted action has given very real security to small states in Europe; e. g. to Sweden as against the fear of Russia. Next in severity among international sanctions is the economic boycott. Then follows diplomatic boycott. After that come financial restrictions, formal or informal. (When Secretary Hughes several years ago requested that private foreign loans be submitted to the State Department for its approval, he instituted what might have developed into a powerful and elastic, though informal and extra-legal sanction.) Then what a range of possibilities are covered by the expression "diplomatic assistance"!

Finally, there is the much vaunted "sanction of public opinion". This is an extremely vague expression. It may refer to very real power or to nothing, depending upon what is meant by it. And to determine what is meant by it, two distinctions must be observed.

In the first place, it makes a great deal of difference whether public opinion, so-called, finds merely private and conflicting expression or whether it is crystallized by formal statements of heads of states or their foreign ministers or better still, by some agency of the League of Nations. For example, condemnation of Japanese aggression in China, however insufficient, has nevertheless been far stronger as a result of Secretary Stimson's formal statements and the Lytton Commission's report, than it would have been if the Lippmanns, Brisbanes, Rowells, Treats, Willoughbys, and all the others who spoke or wrote on the subject had been left to neutralize each other. As it is the condemnation has become a part of *national, and indeed of international, public policy.*

In the second place, an even more important distinction is required to make clear just what is implied by "the sanction of public opinion". It is the difference between the desire for approval for its own sake and the desire for approval for the sake of other benefits. Among individuals both motives are

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powerful incentives to right conduct. Social, professional and business ambition is only a partial reason for the value we attach to the good will of our fellows. We cherish their regard for its own sake because we associate constantly and intimately with them. We must be able to look them in the face. But it is otherwise with nations. If the Japanese people as individuals were in daily and close contact with foreigners, the national policy of Japan might be considerably influenced by outside opinion. But the Japanese, like other people, associate mostly with their countrymen. And they naturally care little what we think of their national policy except as our opinion may in some way or other be made to affect their security, their business or their power.

I. THE CONTRACTUAL VIEW

Let us now consider the first of the two prevailing and inadequate attitudes toward a sanctions policy. It has two essential parts. It approves formal and drastic sanctions, such as military force and economic boycott. And it requires definite commitments or pledges before the event of aggression or other act to be punished. The second aspect of the idea is quite as important as the first. It is the doctrine not merely of strong and formal sanctions but of definitely pledged ones.

This ideal of a peace "with teeth in it"—and teeth that show—had its greatest vogue, as far as this country is concerned, during the later war years and the peace negotiations. It had most distinguished support. Proclaimed to the world by Theodore Roosevelt in 1912, it was now championed by his two great rivals, Taft and Wilson. It was expressed in the very name of the League to Enforce Peace. To a limited extent it was embodied in the Covenant of the League of Nations. It later became the basis of the Draft Treaty of Mutual Assistance, of the Geneva Protocol, and of some of the Locarno Pacts. It seems to have been the view of most Frenchmen throughout the whole post-war period to the present day.

But even before the end of the war and among the friends of the League-of-Nations idea, there were many who opposed this

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strongly dental view of sanctions. And one circumstance after another has diminished its following. A valid criticism of the doctrine necessitates some sketching of this familiar history.

First of all, the too conspicuous teeth of the Covenant—although they were not so fierce when one came to examine them closely—frightened the United States away from membership in the League during the controversy of 1919-20. Not only did these teeth keep us out of the League but the memory of them has kept us aloof. The morbid fear that in some way we might become obligated to help enforce the peace has ever since hindered our coöperation with the League in its good works generally.

By repelling the United States the enforcement-of-peace idea has seriously weakened the League of Nations. Seeing this, many former advocates of the idea have veered completely away from it. This change of opinion has deeply influenced the policy of the League, which has steadily refrained from the use of strong sanctions. As a matter of hard fact, the absence of the United States has necessitated such a policy. The possibility of an economic boycott, for example, would be completely destroyed by the insistence of the United States upon her neutral right to trade. This was one of the principal reasons why Great Britain refused to ratify the Geneva Protocol. For upon her and her fleet would fall in practice the task of enforcing a blockade and the danger of a clash with this country. So an agreement was prevented that might have lightened the burden of insecurity that has rested so heavily upon the world during the nine succeeding years. Remembering this, we ought not to lay the blame for armaments wholly upon Europe.

The considerable measure of success that the League has had without the obvious use of strong sanctions has encouraged the opposition to the enforcement idea. Much of this success has been in fields apart from the settlement of threats of war. But one of its most brilliant achievements was the stopping of an incipient war between Greece and Bulgaria in October of 1925. Now I cannot agree with the opinion that the existence of strong sanctions, even if not used—the gun behind the door,

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in other words—has played no part in the League's accomplishments. It probably played a very important part in this affair with Greece. But the opposite opinion is more widely held and has accelerated the trend away from sanctions.

The terms imposed by the victors upon the conquered peoples at the end of the war have turned a great many who would otherwise be favorable away from the idea of promising to help to enforce the peace. Their objection is not to the theory of the enforcement of peace in general, but to the enforcement of this particular peace. They consider it so fundamentally unfair and unstable that they are unwilling to undertake any responsibility to help preserve it. Down in their hearts, I suspect, many of them do not want it preserved, such is their emotional set against it.

Another and closely related development of post-war history has inclined opinion away from the very principle of predetermined sanctions. The scientific investigation of the causes of the World War has tended to relieve Germany and her allies of a part of the blame. So people are saying: "If we were so lamentably mistaken in our war to end war—well, never again!" I cannot subscribe to this argument. That we may have been mistaken once does not mean that we can never be certain. General Bliss, Professor Shotwell and David Hunter Miller have shown the way to remove that difficulty by their definition of an aggressor. They propose that we agree to consider as an aggressor any state which refuses the request of its opponent to submit the subject of a controversy to arbitration or adjudication and nevertheless resorts to war.[1]

What then can be said in evaluation of this first view of sanctions? Whatever its theoretical merits, at present the idea of pledged and drastic sanctions is altogether inapplicable. And for a long time it will continue to be so. Every attempt to make it the condition of membership in the society of nations, to make it the basis of the coöperative life of the peoples of

[1] Perhaps better still would be a combination of this idea with the suggestion made by President Roosevelt and Ambassador Davis in May 1933 that aggression be defined in terms of the presence of troops on alien soil without treaty permission.

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the world, will tend further to disrupt that group. Especially will it tend to estrange the United States, to encourage the isolationist disposition of this country. It is of no use to ask whether the United States ought to accept the principle. The fact is that the United States will not accept it. (At any rate the country will not formally accept it unless and until, perhaps, sometime in the future it finds that it has been acting upon it.) Friends of peace would more wisely do their thinking in terms of realities instead of conditions contrary to fact.

Fundamentally the contractual view of sanctions is inapplicable because the group sense in the society of nations is too immature. The responsibility that people will assume in a group will depend upon their loyalty to it. And group loyalty is never created at once—by a document or a covenant. It must necessarily be a long, slow, historical growth. It can be developed only through coöperation. Premature insistence upon the guarantee of peace would destroy that coöperation, would destroy the very thing that may make the guarantee of peace possible in the future.

II. The Anti-Sanctions View

The second attitude is expressed in the slogan: "No sanctions!" It objects not merely to a promise before the act to be restrained, and not merely to a system of sanctions under present circumstances, but to the very principle of the enforcement of peace. To be sure, some of the advocates of this view would add the qualifying words: "except the sanction of public opinion". But others tend to be suspicious even of this, especially if the opinion is officially expressed. They fear that public condemnation of the act of a foreign state would entangle us in feuds that might lead to still other forms of pressure. In this, as in any positive action, there is risk and so these people object even to this modicum of positive action in the interest of peace. Thus has extreme negative pacifism run to seed.

There are various kinds of no-sanctions people. Some are truculent isolationists like ex-Senator Reed of Missouri, Hearst, Brisbane and Senator Hiram Johnson. They are not primarily interested in world peace or security because they do not

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believe that American security or other vital American interests depend to any considerable extent upon world security. No-sanction advocates of another type *are* deeply interested in world peace and security but they believe that the way to advance the cause is just to be peaceable ourselves and to propagate the gospel of peace and disarmament everywhere. Still others are not so negative in their attitude. They believe in *a* league of nations or even in the League of Nations provided its teeth are extracted or become atrophied. The late Chancellor Jordan and Professor Dewey would draw all of its teeth except that of public opinion officially expressed and the *Cultus New-Republicanus* would draw the pretentious ones, leaving only the little and concealed ones.

With the Hearst-Reed-Johnson kind of objection to sanctions I certainly cannot agree. The security and other interests of this country do bear an important relation to world security. But the case for this proposition need not be stated here.

The other kind of no-sanctions opinion, which I shall call "negative pacifism", deserves more careful attention. It is the belief that the cause of peace can best be served by encouraging among people everywhere a reluctance or unwillingness to have their countries go to war. This might be true if historical and geographical circumstances were in several important respects different from those which actually prevail in the world. If the national self-consciousness of all countries were as mature as that of the oldest national states, if all boundaries were clearly demarked by geography and historical acquiescence, if all countries were as self-sufficient economically as our own, and if it were not for the international strain caused by the unequal pressure of population upon land and natural resources—if these were the conditions of international life, then the problem of peace would be one merely of overcoming chauvinism and the pacifist attitude would be entirely reasonable.

But these conditions are contrary to fact. War and insecurity are the result of basic maladjustments. As a consequence, there are three types of states relative to the security problem:

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(1) Nations of the first type, such as Japan, Italy and post-war Germany, are profoundly dissatisfied internationally. This is not because of any inherent antisocial disposition. It is the result of history and geography.

(2) Nations of the second type are, in the international sense, comparatively contented except in the matter of security. But, owing to the malaise of their neighbors of the first type, they are very insecure. Germany from its union to the fall of Bismarck was in this class but it is there no longer. France was not then but it is now. The two have exchanged places.

(3) The third type of state is by comparison both satisfied and secure. Our own country belongs conspicuously to this class.

In brief, the three types of states are: the deeply dissatisfied, the satisfied but insecure, and the satisfied and secure.

In this sort of a world, negative pacifism cannot further the cause of peace but actually hinders it. The trouble is that pacifism spreads so unequally in different countries owing to the above-mentioned differences in conditions. It is bound to make much more headway in the countries that are relatively both satisfied and secure. In the profoundly discontented ones, however, such as Italy, Germany and Japan, pacifism inevitably seems contrary to vital national interest and has very little chance to prevail. With regard to those dissatisfied states two things will have to be done before there can be any general international security. Their just grievances must gradually be alleviated and in the meantime their inclination to self-help must be restrained.

Of the two necessities, conciliation and restraint, only the latter has directly to do with sanctions. But the two things are complementary and inseparably connected aspects of the same positive internationalism that differs so essentially from negative pacifism. Without the interim restraint it is hard to see how there can be a development of international consciousness sufficient for the ultimate redress of grievances.

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Negative pacifism, as has been said, thrives most in satisfied and secure states. It is a menace to peace because it deters such states from doing their part in the two essential tasks just mentioned. Their part is a peculiarly important one. Their interest is less partisan than that of others but it is not less real, for the maintenance of order and justice is of great concern to them. Their interest is a social one. And this matter of the social, as distinct from the partisan, interest, is of the utmost consequence in the process of government. Wherever there is a serious conflict of interests the stronger will always prevail unless the weaker can call to its assistance those who are relatively indifferent to the controversy itself but deeply concerned in the preservation of the group and the principles of conduct necessary thereto.

The issue as to foreign policy is not at all between militaristic nationalism and the desire for peace. The alignment that really matters is between positive internationalists and all those who for any reason are opposed. Among the latter are allies with the most divergent aims, idealistic pacifiists and the most cynical nationalists. Militarism is a negligible factor in this country and it is useless to rail against it. We have no incentive to aggression. But our aloofness from coöperation in the general interest can be just as inimical to world peace. Not to help is actually to hinder, or even completely to obstruct coöperation.

III. THE ORGANIC VIEW

More effective sanctions, to repeat, are essential to world order. But the group sense among the nations, international group loyalty, is as yet too immature for a policy of commitments on the part of this country.

Nevertheless, the Society of Nations, the real League of Nations, is much older than the Covenant embodied in the Treaty of Versailles. (Even the arch-nationalist Treitschke admits that the political community of European states had developed into an institution of value by the time of the Congress of Vienna, more than a century ago.) The Covenant of 1919 was simply a new and formal constitution for an

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already existing society. It was a valuable achievement in most respects. But its too rigid conditions of membership tended to shut us out. Happily they did not succeed. After a brief huff in Harding's administration, when the State Department left unanswered all communications from the League, our country has again participated more freely in the group life of the nations. And that constitutes real membership in a real league. It was never the intention of the American people to put themselves beyond international society. The rejection of the Covenant was nothing more than the refusal to promise to apply the more drastic sanctions, conditions being what they were.

But for all its fair start, the Society of Nations is comparatively young and immature. The participation of the United States, especially before the war, was guarded and limited. For the Society of Nations is an outgrowth and an enlargement of the Concert of Europe, from which we have traditionally held aloof.

New loyalties, much more than old and intrenched ones, are matters of calculation regarding self-interest. So far as I know, it may be quite possible that a league of all the nations may some time become so established in the minds and hearts of a generation brought up from infancy to revere it, that it will habitually be looked upon as an end in itself and not merely as a means to national ends. But if that condition ever does come into being it will be as a result of a long transition during which international coöperation will have to justify itself in terms of national interest.

During that long period of transition the willingness of the United States to coöperate will depend upon the balancing of three considerations. America will consider, in the first place, the importance of its interest in, or need for, coöperation. It will ask to what extent its own security depends upon world security. The second consideration will be the people's confidence in group effort. No matter how badly the nation may feel the need of general security or effective coöperation for other purposes, if it believes those things to be unattainable, it will not risk much for them. And the third consideration will

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be the country's estimate of the sacrifice, responsibility or risk involved. Even if the country admits some need for coöperation and even if it believes in some possibility of success, it will still be reluctant to undertake responsibility out of proportion to that need and that possibility. In brief, the considerations are: need, confidence and cost.

The significant thing about these factors to be balanced is that they are so variable. For one thing, this country's conception of the dependence of its national interests upon world security is very likely to grow with the years. As it is gradually driven home that insecurity in the world at large is bound to injure our own vital national interests we shall be more and more willing to work with others to reduce that insecurity.

The second factor, that of confidence in the effectiveness of coöperation, is likewise variable. It fluctuates with every failure and every success. The Vilna affair reduced confidence in the League. What was the use of the thing anyway? But its brilliant victory in the Graeco-Bulgarian conflict sent its stock soaring skyward. A potential European war was nipped in the bud and that blotted out a dozen defeats. An institution that could do that, was worth making sacrifices for. This confidence in international coöperation is a matter of confidence in fellow coöperators. In a sense, it is a nation's estimate of other nations' confidence. The willingness of any state to assume responsibility depends upon its estimate of the other states' willingness to do likewise. For one country to go much beyond others would be sheer quixotism. The most that can be expected is that the nations will encourage each other, despite innumerable setbacks, to go farther and farther on the road to solidarity.

The third factor, that of cost or risk of coöperation, is no less variable. The greater the prospect of effective joint action the smaller will be the risk. Much, too, depends upon the peace system to be maintained. The risk of defending the post-war system is greater, according to prevailing American opinion, than that of supporting a milder and juster peace would be. The wisdom of correcting any particular mistake may well be doubted. But certainly there is a relation between the degree

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of revision that experience may prove to be feasible and the willingness of this country to assume responsibility.

Cost or responsibility varies also with place. It is vastly different to guarantee peace in Scandinavia than to guarantee it in the Balkans or the Far East. Great Britain at Locarno was willing to assume greater responsibility for Franco-German peace than for peace between Germany and Poland. Traditional policy must be taken into account. American tradition is more hostile to European commitments than to comparable obligations elsewhere. It is least opposed to obligations on this hemisphere.

The point of all this talk about the variability of these factors is that any practical policy of sanctions must be flexible. It must allow for change of circumstances, for growth. It should depend more upon the organic, and less upon the contractual, conception of government—of international, as well as other, government.

The third view of sanctions conforms to this principle. It recognizes that the most the United States will now promise beforehand to do in case of aggression is merely to confer, or, possibly, not to interfere.[2] But our pardonable reluctance to promise very much under present world conditions ought not to pass over and crystallize into a permanent dogmatic objection to sanctions. Furthermore, we ought not to wait until there is sufficient international loyalty to justify definite promises, before we participate in sanctions. The actual use of sanctions is quite as essential to the growth of world loyalty as loyalty is necessary for a policy of pledges. Unless in some way aggression is progressively checked, I see no hope for the further advance of the prestige of the group. *The group and its sanctions must develop together.*

The important consideration, the thought that I wish especially to emphasize, is that sanctions can develop with-

[2] Since the writing of this article Ambassador Davis stated at Geneva in May 1933 that the United States was willing to agree not to interfere with collective sanctions against an aggressor. But this very important advance beyond the promise to confer was soon afterward practically nullified by the unwillingness of Congress to permit the president to discriminate between belligerents in the application of an embargo on arms.

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out treaty promises for their application. Fundamental policies often grow that way. Suppose that, as one occasion after another arises for the application of restraint, the nations interested in peace coöperate in taking such steps as are feasible. Our country would then work out from precedent to precedent its own policy of sanctions. The policy could grow with the country's sense of interdependence, with its interest in international security. It could grow with the country's confidence in joint action. It could develop with any improvement in world conditions, such as revision of the post-war peace settlement, that may diminish the burden of maintaining international order. It would allow us to undertake greater responsibility in certain regions and in certain kinds of cases than in others.

It will be asked if a policy that avoids commitments would give security. At first it would not. But in the long run it might give greater security than would promises. For actions speak louder than words. Other countries would probably learn to guess our behavior by observing it. I would be glad to have the United States promise, if it could do so wholeheartedly. Since it cannot promise, let it perform anyway and in the measure that it is willing.

Some such idea seems to have actuated our State Department since the making of the Kellogg-Briand Pact. That document said not a word of sanctions. But it prepared the way for such positive action as we might care to take in the future. I remember thinking when the Pact was being considered that it could be just a platitude or pious gesture or that it might develop into something positive. Fortunately, it seems to be doing the latter, though in ever so slight a degree. There were two principal occasions for its application during Mr. Stimson's secretaryship, the Sino-Russian and Sino-Japanese affairs. On both occasions America was willing to go, not very far, to be sure, toward the restraint of aggression, but nevertheless about as far as the other major powers would go.

Secretary Stimson consciously improved the opportunity offered by the Manchurian affair to develop a concrete sanctions policy, the non-recognition of territorial transfers made by

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force. Regarding the *content or substance* of the Stimson non-recognition policy, I am not at all enthusiastic. It is open to very cogent objection, but that is of no consequence in this connection. The point here is the *way* Secretaries Kellogg and Stimson developed their policy. It is only in some such way that this country can ever be persuaded to participate in a sanctions policy.

Unfortunately President Hoover felt called upon to accompany an explanation of the well-considered procedure of his administration with an entirely unnecessary dictum to the effect that we would never help to enforce peace either by arms or economic action. Never is a long time and I see no good in his use of the word. I suspect if we really do will the *end* badly enough we shall have at some time to will the *means*. And when the group sense is strong enough to cause this and other countries to *will* the means it is likely that they will not actually have to *use* very drastic means.[3]

But there is no need to look so far or to say in advance what we will do in all contigencies. The important thing is to coöperate in actual situations in ways that seem appropriate. Our rule should be to coöperate, always to coöperate! Out of actual coöperation will grow whatever international group loyalty and sense of obligation it is possible to develop. And it is only on a basis of loyalty and a sense of obligation that an effective policy of sanctions can be built.

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[3] President Roosevelt and Secretary Hull were just taking office when the present article was written. Their inclination to go appreciably farther than their predecessors in the matter of promises in the interest of world peace has been restrained by public and Congressional opinion. They seem, however, to appreciate the fact, which it is even more important than ever to bear in mind, that the total repudiation of the principle of sanctions is not the only alternative to a policy of pledged sanctions.

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A RELATIVISTIC VIEW OF SOVEREIGNTY

THE place of the concept of sovereignty in political science has been sufficiently agitated during the last thirty-odd years. After a time of destructive attack, the world of politics awaited with some expectancy the constructive case of the pluralists, and this case is exemplified as fully as possible, perhaps, in Laski's *A Grammar of Politics*. As Rockow has suggested, "In the last five years [since the *Grammar*], there has been no new departure in English political thought. The books published may indicate strategic withdrawal."[1] In general, it is probable that the more effective attack on sovereignty will come, in the future, from the exponents of international law and the principle of a world community of legal values which transcends the state. Pluralistic criticism is becoming more a general theory of the social structure of the state and less an attack or even a denial of the state as a coördinating agency.[2] The defense of sovereignty, on the other hand, seems to be reaching a new and more respectable synthesis, which is not, however, materially different from certain earlier monistic ideas.[3] It is, no doubt, too optimistic to believe that some integrated notion of this conception may be accepted by both critics and defenders, or that they both will proceed to the examination of the state as a functioning institution.

The starting point of this paper is the recognition that both the monists and the pluralists attack the question of sovereignty in terms of universals. This is true of both the formal doctrine of sovereignty and the general theory of social functions which grows out of pluralism. But one peculiar aspect of this battle of universals is that the seemingly close lines of conflict run

[1] Lewis Rockow, "The Doctrine of the Sovereignty of the Constitution", *The American Political Science Review*, Vol. XXV (1931), p. 574.

[2] *Ibid.*, p. 587.

[3] See A. D. Lindsay, "Sovereignty", *Proceedings of the Aristotelian Society*, New Series, Vol. XXIV (1924), pp. 235-54; W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928). Other publications will be cited in the course of this paper.

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parallel more often than they cross. In the first place, the monists and pluralists disagree as to what is claimed as a universal in the doctrine of the other, and, in the second place, in the construction of their own systems, the universals which are postulated are frequently not in conflict with the fundamental ideas of the thinkers they attack. To be specific, much of the criticism leveled against John Austin in recent years would have been admitted as true by Austin himself, though somewhat irrelevant; and at the present time much of the critical reception of pluralism is based on the assumption that the pluralists have made more extensive claims than they actually have as to the nature of political authority.

Our problem here is to state the genuine and the pseudo-conflicts between monism and pluralism, to indicate what may be common to both types of interpretation, and to show the relativistic character of the doctrines of monism as well as of those which deny the sovereignty of the state.

Both monists and pluralists claim their theories are founded on the facts of society, or at least that what we know of the history of the state is not inconsistent with such ideas. Both claim that the conceptions they present are the best explanations of the legal and social foundations of political society; and both find the facts for which they are looking. Both would admit, conceivably, that the state could so change that their universals would be inapplicable. The monists will admit that the facts upon which sovereignty is built might disappear, and the pluralists should admit that facts might develop which would make the state genuinely sovereign. Yet, why should it not be admitted that the concept of sovereignty and the factual foundations of statehood are in constant evolution, and that such an evolution must weaken the universal character of political ideas both in space and time? On pragmatic and positivistic principles the pluralistic view must be limited spatially and temporally, just as must the monistic system of universals. Both pluralism and monism have one foot on the ideal and the other on the actual,[4] and it is difficult in different cases to determine

[4] Laski shifts in this respect as is well indicated by E. D. Ellis, "The Pluralistic State", *The American Political Science Review*, Vol. XIV (1920), pp. 400-401.

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whether or not a statement of doctrine implies that it is factual or ideal. Monism is at least more coherent than pluralism since it contends that if, in a given case, the facts do not bear out the conception of sovereignty, the monistic position is more reasonable as a long-run interpretation of the state as it should be.[5] Pluralism, on the other hand, asserts itself to be pragmatic and scientific, and, with fundamental inconsistency, it postulates its ideas as of universal application. This is, in all probability, the essential logical weakness of the pluralistic attack on the doctrine of sovereignty. If pluralism is really pragmatic, room should be made for the eventuality in which the theory of sovereignty fits the facts.

While monism is very old in that some of its primary qualities reach back into the thought of antiquity, the pluralistic attack may be conveniently dated from Maitland's translation in 1900 of a part of Otto von Gierke's *Das deutsche Genossenschaftsrecht*. It was by asserting the real will and personality of the group that the unity of the state formulated in monistic theory was attacked.[6] If the issue between monism and pluralism has not been drawn by this time it is not likely to develop. We are, in fact, in an excellent position now to undertake a statement of the main outlines of the debate. The suspicion may arise, however, that there have been few occasions on which the issue has been joined and consequently the answers of each camp to the other have not been very effective in clarifying the situation. After a brief statement of the nature of the case made by these traditional opponents, an attempt will be made to evaluate the extent of real conflict in points of view.

[5] Professor Sabine admits this when he concedes that stable political systems will always show a tendency toward the ideal of monism, that is, a self-consistent legal system. G. H. Sabine, "Pluralism: A Point of View", *The American Political Science Review*, Vol. XVII (1923), p. 49.

[6] Otto von Gierke, *Political Theories of the Middle Age*, translation and introduction by F. W. Maitland (London, 1900); see also H. A. L. Fisher (editor), *The Collected Papers of Frederic William Maitland* (Cambridge, 1911), Vol. III, pp. 304 *et seq.*, "Moral Personality and Legal Personality." It is interesting to observe that the pluralistic attack really begins in earnest just where Professor Merriam's study ends. See C. E. Merriam, *History of the Theory of Sovereignty since Rousseau*, Columbia Studies, Vol. XII, No. 4, 1900.

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In fine, most of the elements of the theory of the state which pluralism has advanced can be accepted by the defender of the doctrine of sovereignty. The monist is not primarily concerned with social norms, and therefore he can accept or at least not deny the utilitarian, pragmatic or positivistic ethics upon which the pluralistic case is based. However, as Professor W. W. Willoughby has shown by implication in *The Ethical Basis of Political Authority,* the monist is likely to retain, in the face of positivistic criticism, as much as possible of a rationalistic approach to the problem of political obligation. The monist may accept a public law status for groups or associations, and he may even admit them *qua* groups to political participation and accept the implied functional decentralization of the state. But what the monist insists upon is that one of the valid elements in the institutional framework of the state as we know it is its legal unity. He does not assert by any means that the legal unity of the state is physically unqualified though he might agree with Jellinek that that which characterizes the modern state is its overcoming of the medieval dualisms of church against state and king against people.[7]

The monistic state is the legal state, the *Rechtsstaat,* which moves within the *cadre* of the law. The making and the enforcement of law is the characteristic method of political action; in fact the state attains its legal unity by having a formal monopoly of the right to say what the law is.[8] The absolutism of the state for the monist is generally simply a legal absolutism which is more negative than positive, in that it precludes any other group or organization from having the capacity of making law in a formal sense on a parity with the state. In

[7] Georg Jellinek, *Allgemeine Staatslehre* (Dritte Auflage, Berlin, 1929), p. 323.

[8] The statement of the case in Hobbes and Austin, for instance, is the power of the state to issue commands to its subjects. Rousseau in general regarded law as a command of the body politic to the governmental agency. See A. R. Lord, *The Principles of Politics* (Oxford, 1926), p. 192. Professor Robert T. Crane has suggested, as a modification of Willoughby's juristic conception of the state, that the law should be defined as a command addressed to the agents of the state. R. T. Crane, "Discussion" (of W. W. Willoughby, "The Juristic Conception of the State"), *The American Political Science Review,* Vol. XII (1918), pp. 209-214.

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its broadest sense, then, sovereignty is the peculiar capacity of the state to recognize what the law shall be.[9]

It cannot be said that on the ethical side modern monism makes any general claim to absolutism.[10] Those states which under present-day dictatorships assert an ethical or social absolutism are little concerned with the refinements of the doctrine of sovereignty, for the very word is eloquent of historic constitutionalism. It is one of the peculiarities of Fascism, National Socialism and Communism that they are pragmatic as to the means to be employed to attain the technological integration of the state, which seems to be one of the first objectives of such a socio-scientific monism.[11] It is true, of course, that nineteenth-century Idealism, whether German or English, asserted the unity of the state in both legal and ethical terms. For Bosanquet in *The Philosophical Theory of the State* true sovereignty is the ultimacy of the general will. A moderate statement of social monism from the ethical point of view, which

[9] W. W. Willoughby, *The Fundamental Concepts of Public Law* (New York, 1924), p. 71. Professor Laski has defined his position as follows: "I have termed this view the pluralistic theory of the state because it is rooted in a denial that any association of men in the community is inherently entitled to primacy over any other association." The title to the preëminence which Laski in fact grants depends always on the consequences of performance. H. J. Laski, "Law and the State", *Economica*, Nov. 1929, No. 27, p. 283. In contrast to this the monist would assert that, as a matter of fact, one of the primary allegiances of the individual is to the law as a permanent means of securing social peace. Social peace, for the monist, is a consequence of the supremacy of the law. The monist would agree, however, with Carl Schmitt, *Die Diktatur* (München, 1928), p. 178, ". . . . was dem Recht wesentlich ist, nämlich die Form."

[10] Professor Coker states the elements of monism as follows: (1) in a given society there is only one system for the enactment and enforcement of civil laws; (2) the usual name for "the organization comprehending these institutions is the state"; (3) within such an organization there is a legal sovereign, an organ or group which possesses ultimate legal control over other organs in the state; (4) and the state has a practical and moral utility as an agency of unification and coördination among the coöperative groups of society. F. W. Coker, "The Technique of the Pluralist State", *The American Political Science Review*, Vol. XV (1921), p. 211.

[11] This statement is probably less true of Germany than of Italy, since the National Socialists support the principle of "Germanic democracy", which consists in the free election of the leader who is subject to full responsibility. See Adolf Hitler, *Mein Kampf* (one vol. ed., München, 1933), p. 99.

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contrasts sharply with the social monism of a pragmatic slant, is found in Hocking's *Man and the State*. Here, from an ethical point of view, the significance of the unity of the state is its monopoly of force, which means a denial of force to others than the rulers of the state, and which demands that political ends be attained by persuasion and motivations to action whether rational or propagandist. Hocking does not, on the other hand, claim for the state a morally absolute integration.

A curious phase of the development of recent years is that the concept of the state as a legal person does not seem to be regarded as significant support of the pragmatic dictatorship. It cannot be said that the idea of the state as a legal person is of any independent importance in contemporary totalitarian political science. On the other hand, Duguit has regarded the notion of the state as a legal person as a great metaphysical danger, while in fact it has been his non-metaphysical, sociological and syndicalistic interpretation which has given impetus to the absolutism of the state which he so greatly feared. History seems to show that the idea of the state as a legal person, which has served as a concept of operative criticism for the *Rechtsstaat,* is fundamentally inadequate for the sociological monism of the dictatorship.[12]

If we turn to the leading ideas of pluralism we find that the variety of its attack makes pluralism as well as the state pluralistic. Beyond certain principles of method which spring from positivism and pragmatism, there is little unity of front in the pluralistic onslaught.[13] In the work of Laski, for in-

[12] See Elliott, *op. cit.*, ch. xi, especially p. 324. For Duguit's attack on the monistic theory of the state with particular reference to German doctrines of the nineteenth century, see Léon Duguit, "The Law and the State", *Harvard Law Review*, Vol. XXXI (1917), pp. 1-185. See Morris Ploscowe, "La Procédure criminelle dans l'Italie fasciste", *Revue des sciences politiques*, Vol. LV (1932), p. 497, citing Michele Bianchi, "L'État, pour Mussolini, est une réalité non seulement politique, mais idéale et morale. La Personne vivante de l'État n'est pas un concept abstrait, une formule juridique, mais un sentiment et une volonté, le sentiment et la volonté de la nation."

[13] See F. W. Coker, *Recent Political Thought* (New York, 1934), chs. xviii-xix; *id.*, "Pluralistic Theories and the Attack upon State Sovereignty", in Merriam, Barnes and Others, *Political Theories: Recent Times* (New York, 1924), ch. iii; *id.*, "The Technique of the Pluralist State", *The American*

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stance, as *A Grammar of Politics* will show, sovereignty is defined as power rather than as legal will in the monistic interpretation. It is easy for him, therefore, to show that since the power of the state is not absolute, the whole superstructure of political monism falls to the ground. Groups have power because they retain the loyalty of the individual, and this power of the groups is a counter-weight to the power of the state. The final positive principle of the functional state is that society is federal rather than unitary.

That pluralism is a general social theory of the state much more than a theory of the legal disunity of the state can be seen in the pictures drawn by John Dewey and Léon Duguit. Both found the state on fact, somewhat in contrast to Laski's attention to the individual conscience, and while Duguit leads finally to the principle of the responsible state which may be constructed on the conceptions of French administrative law, Dewey builds in *The Public and Its Problems* a responsible and realistic state on the indirect consequences of conduct. With both thinkers the formal legal unity of the state is illusory, for the law is not found in the formality of its declaration but in the coincidence of rules with social forces. That law must be

Political Science Review, Vol. XV (1921), pp. 186-213; E. D. Ellis, "The Pluralist State", *ibid.*, Vol. XIV (1920), pp. 393-407. G. H. Sabine, "Pluralism: A Point of View", *ibid.*, Vol. XVII (1923), pp. 34-50, gives a distinctly American interpretation of pluralism and rests his case principally on the incompleteness of municipal systems of law. See W. W. Willoughby, *The Ethical Basis of Political Authority* (New York, 1930), pp. 447-51, for a criticism of the views of Professor Sabine. It may be questioned whether "looseendedness" in a system of municipal law is a basis for the denial of legal sovereignty. See Jellinek, *op. cit.*, p. 358: "Das Dogma der Geschlossenheit des Rechtssystems verkennt das Grundverhältniss von Recht und Staat. An dem Faktum der staatlichen Existenz, hat alles Recht seine unübersteigliche Schranke. Daher kann eine Änderung in den Grundlagen des staatlichen Lebens zwar Recht vernichten, dem Recht wohnt aber niemals die Macht inne, den Gang des Staatslebens in kritischen Zeiten zu bestimmen." *Cf.* G. H. Sabine, "Political Science and the Juristic Point of View", *The American Political Science Review*, Vol. XXII (1928), pp. 553-575. For a discussion which shows distinct pluralistic tendencies, see Max Radin, "The Intermittent Sovereign", *Yale Law Journal*, Vol. XXIX (1930), pp. 514-531. See also P. W. Ward, *Sovereignty* (London, 1928).

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formal in some sense is not denied, but it is contended that the formal element is the least significant thing about the law.[14]

Another theory attacking the sovereign *Rechtsstaat* is that of Krabbe in *The Modern Idea of the State*. Here, as in Duguit, a jural principle superior to the state is sought, but, in contrast with Duguit, the law itself is found in the ethical sense of the community. Real law is perhaps the *legal* consciousness of a community, and the test of law is its conformity with the sense of right, whether in the national or international community. State action can be declaratory of the law but not creative of legal validity, and therefore the state is bound by the law as is the individual. As in other pluralistic theories, the character of legal validity demands a synthesis of functional decentralization and international coördination.

The neo-Kantian attack on the formal sovereignty of the state is best expressed probably in the works of Kelsen.[15] On rational postulates as to the legal order, there rests a world community of legal values. The state itself does not possess a peculiar legal order; it constitutes such an order. Sovereignty is merely a hierarchy of legal norms culminating in a world system. In common with the pluralistic attack generally, the neo-Kantian school views the state as not only limited and subordinated internally but also internationally. Somewhat below the philosophical postulates of an international legal order is the standpoint of those international lawyers who contend that the state must not be considered to be even formally free to reject the rules of international law.[16]

[14] See J. M. Mathews, "A Recent Development in Political Theory", POLITICAL SCIENCE QUARTERLY, Vol. XXIV (1909), pp. 284-95, for an early criticism of Duguit.

[15] See Hans Kelsen, *Allgemeine Staatslehre* (Berlin, 1925). A convenient summary of this work is given by Kelsen, "Aperçu d'une théorie générale de l'État", *Revue du droit public et de la science politique*, Vol. XLIII (1926), pp. 561-646. Consult Johannes Mattern, *Concepts of State, Sovereignty and International Law* (Baltimore, 1928), ch. x.

[16] It would hardly be contended that at the present time there is an objective world sovereignty, and, on the other hand, international lawyers still assume frequently the doctrine of acceptance of international legal rules as the basis of actual domestic legality of these rules. The monist is in no sense an enemy of a developed world law. In fact, it is recognized as one of the chief of

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Is it possible to reconcile these conflicting points of view? In the first place, it may be said that the fundamental issue between monism and pluralism comes to rest on the problem of the nature of law. The monist contends that at least one aspect of the problem of the law must be a formal examination of the conditions under which a declaration of a legal value is to be accepted. The pluralist contends that no unity of the state can be established on the principle of formal unity, that whatever unity is discovered in the state must be found in the real forces which constitute a society. The difficulty of this position is seen in the case of an irreconcilable conflict between political forces, for if no formal point of reference is to be recognized the state has no means *per se* of appealing to the principle of order and public peace as a superior value, though such a formal value might well be accepted. The principle of a formal legal unity of the state serves an immensely valuable purpose in enabling a people to find some legal values, which may be right or wrong, but which in any case have a degree of definiteness that the claims of competing groups cannot have. Even the pluralists must admit that the coördinating function of the state must be sometimes more formal than real, and that the declaration of the state, though it may be registrative of

present-day problems. See R. Emerson, *State and Sovereignty in Modern Germany* (New Haven, 1928), p. 273: "The problem of the future—or, more accurately, of the present—is the building of the federal state of the world." Laski seems uncertain himself as to the basis of international law. In his paper, "Law and the State", *Economica*, Nov. 1929, No. 27, pp. 267-95, he asserts that the validity of law comes, not from its source, but from the acceptance which it secures (p. 275), but in discussing international law he declares that it must be objective both to the state and the individual (p. 286). It might be suggested that nationalism itself and isolationism may be justified on pragmatic grounds on the basis that is used by Laski to justify his pluralistic concept of the state, i. e., the loyalty of the individual is stronger to the state than to the world community. It is also difficult to see why Laski should postulate a "will" for the international community, that is, the recognition of a kind of general will, when he will not do this for the state (p. 289). For a criticism of sovereignty from the international law standpoint, see Emerson, *op. cit.*, pp. 171 *et seq.*; E. M. Borchard, "Political Theory and International Law", in Merriam, Barnes and Others, *op. cit.*, ch. iv; Jean Morellet, "Le Principe de la souveraineté de l'État et le droit international public", *Revue du droit public et de la science politique*, Vol. XLIII (1926), pp. 369-89.

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the facts of society, must be formal to exist at all. Both the formal and the social side of the law are real, but that there must be a death-grapple between them at all times is not admitted by the monist. The formal principle of the law is regarded merely as the organizational aspect of social action, which is the peculiar function of the state.

It is clear that law implying political action is both will and power. The monist contends that the formal aspect of the law is embodied in a declaration of will, that is, the legal unity of the state is to be expressed by legal will. The reality of the limitations of the power of the state is nowhere denied by the monist, and he is willing to accept as valid the pluralistic indictment of the limited physical capacity of political society. Even the Idealists have contended for the most part that the state is external and therefore limited in power, and Bosanquet showed that the means available to the state is not *in pari materia* with its ends.[17] It is difficult to see that the mere assertion that the state is not physically omnipotent is an attack on the viewpoint of the monists. Nor does the principle of decentralization as the operative statement of limited power imply clearly that the unity of the state conceived by the monists has no valid foundation.[18] Whatever value there is in the pluralistic concept of the functional state, or in the public position suggested for groups, might be embodied easily in the state as

[17] Bernard Bosanquet, *The Philosophical Theory of the State* (London, 1899), pp. 187-88.

[18] See Emerson, *op. cit.*, p. 272: "Suppose it be established that the existing form of the sovereign state is both morally and practically inadequate: is it not possible that the fault lies less in the principle of sovereignty than in the method of organization. . . . The organization of the sovereign power of the community—whether it be the national or the world community—must be such as to make its will as far as possible identical with the general will of the community." Laski attacks this view by denying the general will, that is, the state is not based on any general community of interest. This denial is in sharp contrast with his belief in the general international community of interest. Laski's recent paper "Law and the State" (cited above) is an exhaustive denial of the propositions of recent defenders of sovereignty that there must be some organ in the community to resolve disputes. The recent defense of sovereignty has not been in any sense a denial of the social program of pluralism. It cannot be said, however, that the issue is clearly joined even in this splendid paper by Laski, since he does not actually define law otherwise than in very ambiguous terms.

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pictured by the defender of sovereignty. The monist would suggest that such social principles springing from a general theory of the state could be most easily attained under a régime of legal unity.

Where the monist is opposed to a vital international law, such opposition must be based on more general political principles than those which arise directly from the principle of sovereignty. It has already been suggested that a formal theory of the legal unity and personality of the state is not significant in the contemporary repudiation of the liberal political order. Monism in its purer forms may attach some immediate legal importance to the international discretion of the state, but it does not deny the value of recognizing social interdependence between states. When the word sovereignty is used in the defense of an actual discretion in international policy which is contrary to vital and generally recognized interdependence, more is clearly being attributed to the concept than is read into it in a juristic sense by the monists. The same can, of course, be said of the principle of group independence within the state, for groups are denied a proper sphere of autonomy not because of sovereignty but because of erroneous public policy.[19]

[19] The several references which have been made to groups raise the problem of corporate personality. While the emphases of this paper do not suggest an extended examination of this problem, a few observations need to be made. The monistic view, of course, places the corporate personality of any group below the corporate personality of the state when, and if, the latter is assumed, while the pluralistic conception may, if corporate personality is admitted at all, place the group as a corporation on a level with the state. But it must be noted that for the most part there is no general or necessary correlation between monism and the fiction-concession theory of corporate personality on the one hand, and pluralism and the theory of the real corporate personality of groups on the other. Otto von Gierke believed in real personality, but he accepted the sovereignty of the state. Duguit denies sovereignty in the course of his denial of all forms of corporate personality. Austin and Dicey, who were little interested in the corporate or juristic personality of the state, accepted the fiction theory of corporate personality; and the neo-Kantians drain all independence from corporate life since the norms which constitute the law must be supreme.

It can be said, naturally, that the fiction-concession theory implies the supremacy of the state and sovereignty, and to this extent corporate personality must be considered in relation to theories of sovereignty. See Frederic Hallis, *Corporate Personality* (London, 1930), pp. 15, 28, 85-86. It is reason-

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This discussion has led to the assumption that most of the apparent issues between monism and pluralism are capable of reconciliation; that much of the current discussion has been parallel rather than conflicting. One may assume either that the defenders of sovereignty are at fault in not constructing immediately upon their conceptions a general theory of the state, or that the pluralists have gone beyond the necessities of a social theory (which pluralism is for the most part) and attacked an essential principle of legal and constitutional unity in the state. In any case, the value of pluralism is in its delineation of a system of policies which might make the state more of a reality to the individual and which might conceivably vitalize the principle of consent in political life. Much of the value of the pluralistic attack is in its diversity, for as a result of pluralism a number of emergent public policies have been called with great force to the attention of political science.

We have indicated that one of the logical weaknesses of pluralism is the attempt to establish the universal negation of sovereignty on pragmatic grounds. On his own philosophical statement of the case, the pluralist has failed to distinguish between the ideal and the real, and he has failed to admit, as he logically should, that situations may exist in which sovereignty must be admitted as a fact. From the monist's point of view this must be admitted whenever in fact there is a formal legal unity in the state. On the other hand, the pluralistic logic has not been pushed to its limit in the case against *particular* monistic systems. For, on pragmatic grounds, it might be conceivable that a particular monistic synthesis should

able to assume that if the state is regarded as a corporation one must also consider the corporate entities within it, whether or not the state is classified as a sovereign corporation. *Ibid.*, p. 243. To deny the fiction-concession theory of corporate personality may mean a denial of certain conceptions of sovereignty, but it does not mean necessarily the denial of a highest authority vested in the state. One can hardly assert that all corporate groups must be accorded the same treatment, nor deny that the legal character of corporate personality is bound up with social character and purpose. It is instructive to observe here the emphasis placed by Hegel on the organisms which compose the state, the communes, municipalities, corporations, etc. See L. Lévy-Bruhl, *L'Allemagne depuis Leibniz* (Paris, 1890), p. 405. Consult Hallis, *op. cit.*, *passim;* S. Mogi, *Otto von Gierke* (London, 1932).

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lack the elements of universality ascribed to it. In other words, if pragmatism can be of further service in the amplification of the principles of pluralism, it can be of service likewise in refining the principles of monism. Had the pluralistic attack been developed in detail as to particular monistic points of view, certain important consequences might have resulted. In the first place, the pluralist might have been forced to admit that some monistic systems are pragmatically sound; and, in the second place, it might have been shown that monism is extremely uncertain, viewed broadly, of its own universals.[20] The remainder of this paper will be devoted to the examination of this problem.

What is the universal element in the state which the various historic monisms have attempted to formulate? A careful examination should reveal that much that has been claimed as of universal application is nothing more than the peculiarity of a distinctive system. Since the concept and the practice of sovereignty has been subject to a rapid evolution, it is clear that, just as early systems postulated absolutes which were soon outmoded, modern theories have attempted to universalize the historically temporary. The enduring value of the idea of sovereignty is in its adaptation to and explanation of particular moments in the history of the state rather than in developing hypotheses of universal validity both in time and space. Viewed in this light, sovereignty has had a relativistic character historically, and it can be shown, no doubt, that the same is true of the contemporary situation. The suggestion is made

[20] James Bryce, *Studies in History and Jurisprudence* (New York, 1901), pp. 541 *et seq.*, attacks the defenders of sovereignty, especially the Austinian school, for their failure to realize the complexity of attempting to state a theory of sovereignty which is universally applicable. Bryce believed, however, that the problem of universals may be solved by the distinction between *de jure* and *de facto* sovereignty. Sir Paul Vinogradoff, "The Juridical Nature of the State", *Michigan Law Review*, Vol. XXIII (1924), p. 139, suggests that sovereignty has passed through various stages in its development. G. H. Sabine, "Political Science and the Juristic Point of View", *op. cit.*, pp. 553-75, suggests at various points that sovereignty has been adjusted to or grew out of differing circumstances without admitting that the notion of sovereignty was actually valid at any given time. Hallis, *op. cit.*, p. 195, notes that Jellinek considered sovereignty an historical rather than an absolute category.

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here that the idea of sovereignty should be advanced beyond whatever is assumed to be the universal element in the state. The concept of the universal should then be adequate for the foundation either of pluralism or monism, and both of these two broad attempts to explain the principles of state action should be analyzed in relative terms.

It is difficult to make a statement of the universal element or elements in the state that will be of any striking value. Perhaps, for this discussion, the mere concept of such universal elements should be retained in something of a formal sense, without any serious attempt to establish a specific content. Our concern here is not primarily to make a statement of the conceptual universality of the state, for our chief objective is to show by an examination of the theories that both monism and pluralism are in fact particular and relativistic in character. The defense and the criticism of sovereignty involve the state as a functioning unity, not as a formal universal. The diversity in the actual theories of sovereignty is reflective merely of different concepts of the proper organization of political unity. The modern state is the idea and the organization of territorial and associative unity; it is the structural expression of the existence of historic and recognized common purposes.[21] The bases of this unity differ, but all ideas of the state have one

[21] In contrast with the pluralistic "facts" of contingent anarchy, may it not be asserted that one of the profoundest facts of political life is that men do give an allegiance to an orderly and non-violent existence? Does not the continued existence of the state show this? It may be noted that resistance to the principle of the general strike is evidence of allegiance to social coherence. The lack of organization internationally may be taken as showing a fundamental attachment to the state. This common interest in the general will is Krabbe's basis for the defense of majority rule. See H. Krabbe, *The Modern Idea of the State*, translation and introduction by G. H. Sabine and W. J. Shepard (New York, 1922), pp. 74-75, but see in general ch. ii. See also William Orton, "Social Theory and the *Principium Unitatis*", *The American Political Science Review*, Vol. XXI (1927), p. 32: "That issue . . . centers about the relation between *de facto* and *de jure* sovereignty . . . ; and its importance may be suggested by the generalization that security in social relations is attainable . . . only when the *de facto*, or political sovereign — whatsoever the form it may take — has been substantially integrated with the immediate source of ethical or moral authority." As R. M. MacIver has said, the general will "is not so much the will of the state as the will *for* the state, the will to maintain it." *The Modern State* (Oxford, 1926), p. 11.

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element in common, whether pluralistic or monistic, and that is that there is some sort of unity or social integration involved. The principle of the *organization* of this unity in terms of law or legal sense is sovereignty; the unity itself is an attribute of the state.[22] Sovereignty is thus not the unity, but its legal expression; it is the body of prevailing legal principles upon which public power is exercised.

An immediate consequence of this conception is that no one interpretation or organization of sovereignty need be regarded as exclusively true, since a theory of sovereignty is constructed beyond the universals necessary to the conception of the state. Sovereignty lies between the universals in the state conception and the principles of public policy which characterize pluralism. It consists of certain principles which seem valuable in making manifest the conceptual unity of the state. This is not to say that the problem of policy does not enter into the diverse political conceptions of sovereignty, but it does mean that only those questions of policy are involved in sovereignty which are relevant to the organization of public power. Sovereignty, in other words, is and has been a problem in the constitutional organization of the state. The test of the truth of a theory of sovereignty, therefore, should in no sense be its universal applicability or its logical self-consistency. The value of a theory of sovereignty should lie in its appeal to the public lawyers of a particular state. It can be seen readily that this *localization* of the idea of sovereignty must of necessity eventuate in situations in which it is recognized that a given form of the theory does not apply.

The localization of sovereignty may be further observed in the distinction between legal and social sovereignty. Legal sovereignty is a formal explanation in terms of law of the

[22] See John Dickinson, "A Working Theory of Sovereignty", POLITICAL SCIENCE QUARTERLY, Vol. XLII (1927), p. 527: "The *legal* doctrine of sovereignty can therefore be summed up as fundamentally nothing but a demand for the unified organization of authority within the community in order to provide the necessary basis for a system of legal order. It was this *legal* form of the doctrine of sovereignty which earliest emerged, and which made sovereignty a fundamental concept of political thought. It was the answer of an advancing civilization to the unbearable legal confusion of the middle ages."

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unifying force of the state, while social sovereignty is an explanation of the interests or forces which predominate in the state. Juristic sovereignty as a political value depends upon the significance of some sort of formal validity attached to a declaration of law, while social sovereignty is generally an expression of ethical ideals which should or may dominate in the action of government. The monist *per se* is not primarily interested in the types of social policy which a state should adopt, but a sociological monist, that is, one who would realize in the state a vital integration of social and institutional life, must of necessity adhere to some sort of juristic conception of sovereignty, though the form of this sovereignty is by no means predetermined. Let us first turn to a consideration of the historic forms of juristic sovereignty.

There are four outstanding ideas of juristic sovereignty, and these are the French, the English, the German and the American. The French conceptions must be divided between those prevailing before the Revolution and those coming after. Jean Bodin in his *Six Livres de la République* is clearly the magistral apologist of the principles of state unity to be found in the *ancien régime*. Sovereignty was vested in an organ of the state, in the monarch, and the peculiar characteristic of the monarch was that he was above most positive restrictions.[23]

[23] Professor McIlwain takes the theory of Bodin and the French jurists of the sixteenth and seventeenth centuries as the foundation of a true juristic conception of sovereignty. He does this because the French thinkers, as contrasted with Hobbes, recognized always a fundamental law or laws behind the sovereign organ. McIlwain's position seems to approximate in some degree the basic idea of Lindsay of the sovereignty of the constitution, but McIlwain insists that in advanced political society "the highest organ is the true sovereign, and the only one, because it is the highest body legally able to make rules for the subjects, and itself free of the law." C. H. McIlwain, "Sovereignty Again", *Economica*, Vol. IV, Nov. 1926, p. 257. McIlwain suggests, however, that from the French jurists we derive one of the richest and most profound generalizations of modern political thought, that is, the inherent nature of the constitution of the state imposes limitations on the sovereign organ (p. 263). The French conception of sovereignty was above all juristic in nature. "It was reserved for John Austin and his followers . . . to grant to a definite person or body of persons what St. Thomas denied even to God" (p. 263). *Cf.* Max A. Shepard, "Sovereignty at the Crossroads, A Study of Bodin", POLITICAL SCIENCE QUARTERLY, Vol. XLV (1930), pp. 580-603; and C. H. McIlwain, "A Fragment on Sovereignty", POLITICAL SCIENCE QUARTERLY, Vol. XLVIII (1933), pp. 95-106.

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The power and the will of the monarch were the means of escape from warring civil and religious factions, and the unification of the feudal claims of the nobility in the higher synthesis of the state. In Bodin, as since, sovereignty was a means of escape from anarchy and revolution; it was the foundation of public order and peace. The historic service of the theory of Bodin was in formulating a stable constitutional principle for the attainment of some sort of coherence in political life; in the theory was the principle by which those forces not desiring to recognize the primary claims of external peace were brought to task for their presumption.[24]

The French conception of sovereignty since the Revolution has been that of *souveraineté nationale*. This principle grew out of the social contract and natural rights theories of the epoch. The primary assumption is, of course, what we may call popular sovereignty, but popular sovereignty itself does not constitute the idea of national sovereignty. If public opinion is the primordial and necessary political force, if it is the sovereign in fact, when legal sovereignty is located elsewhere than in the nation from which comes this opinion, opinion cannot but exercise its authority in an imperfect, irregular or revolutionary fashion. Sovereign opinion can then be translated only by inefficacious or confused expression; it comes before the legal sovereign with humble requests or with revolutionary agitation. Therefore, there is a lack of harmony between the fact and the law. But should we place legal sovereignty necessarily where we find the fact or the opinion, we may reëstablish harmony. The law will become under these circumstances as exactly as possible a reality. To respect, recognize and organize national sovereignty is to give to public opinion a superior force, a precise expression, a juridical value and a legal authority. To perfect, on the other hand, this rulership of opinion, to prepare for its juridical expression, modern liberty has given it also other means of manifesting

[24] Modern Japanese ideas of sovereignty are somewhat similar to those of Bodin, but in Japan the emphasis falls upon the sovereignty of a person—the Emperor—rather than upon the sovereignty of the emperorship. See Kenneth Colegrove, "The Japanese Emperor", *The American Political Science Review*, Vol. XXVI (1932), p. 649.

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itself through individual initiative, that is, the liberty of the press and the right of association.[25]

The traditional British doctrine of sovereignty is comparable to that of Bodin, except that the British do not accept the juristic character of fundamental constitutional principles. Whether we take a modern analysis of the British constitution such as is given by A. V. Dicey in *The Law of the Constitution,* or an earlier one such as is found in John Austin's *The Province of Jurisprudence Determined,* or even in Sir William Blackstone's *Commentaries on the Laws of England,* the same principle prevails. This conception is the sovereignty of the highest organ of the government.[26] Legal sovereignty is not vested in the state as a legal person or in the nation, nor is it vested in the monarch or a class, but in the legislative power which includes the King, the Lords and the Commons. The French doctrines of monarchical and national sovereignty are alike excluded. The reality of the British doctrine is seen in the fact that legal values do come from a juristically supreme and determinate organ, to which the people do render habitual obedience.[27]

[25] See A. Esmein, *Éléments de droit constitutionnel français et comparé* (8th edition, Paris, 1927), Vol. I, pp. 318-19. This interpretation of national sovereignty must be completed by noting the fact that Esmein accepts the legal personality of the state or of the nation. *Ibid.*, Vol. I, pp. 46-50. Likewise, he universalizes the principle of national sovereignty. *Ibid.*, Vol. I, pp. 48-49, 317.

[26] It is possible that Austin's theory of sovereignty residing in a determinate superior composed of persons who receive habitual obedience should not be regarded as a theory which vests sovereignty in an organ. The concept of an organ, however, plainly involves a functional relationship, or an organized relationship. *Cf.* Bryce, *op. cit.*, p. 505. For Bryce's criticism of Austin on this point, see *ibid.*, pp. 537-38.

[27] Austin's inclusion of the electorate in the determinate superior is clearly a confusion of legal and social sovereignty, and it might be interpreted as an attempt to synthesize the modern French and British doctrines. For a criticism of the idea that the electorate may be a part of the sovereign organ, see Dickinson, *op. cit.*, pp. 531, 532, note 1. Ritchie argued that the lawyer is seeking a determinate superior which has the right to declare what the law is, and that it is illogical to include the electorate in the determinate sovereign as Austin does, since the electorate is not a determinate law-making body. D. G. Ritchie, "On the Conception of Sovereignty", *The Annals of the American Academy of Political and Social Science,* Vol. I (1891), p. 392.

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The British doctrine of sovereignty is to be found in the practice of the constitution, and because of the early and successful attempts to limit the powers of the higher governmental organs, it was not found necessary to resort to more complicated theories. Obviously, the most complicated of all the interpretations of the principle of sovereignty is to be discovered in the conceptions of the German jurists of the nineteenth century.[28] The involved character of German theory is a result of the more entangled situation with which the jurists had to deal. Not only was the position of the monarch more distinct legally than in England, but there was also the problem of federalism which deprived the idea of sovereignty of some of its possible coherence. The German theory is the theory of state sovereignty (*Staatssouveränität*). Sovereignty is an attribute of the state as a juristic person with a legal will. The monarch thus becomes a representative of the state will, but the sovereignty of the state itself is not inherent in him. The value of this principle lay in the fact that it was possible to limit the state, and consequently the ruler, in the name of law and by the action of the state itself. However, in Bluntschli sovereignty is not vested exclusively in the state, since a remaining but different sovereignty of the monarch is accepted.[30] The German theory developed likewise the idea of the non-sovereign state to enable the doctrine to be held that though the German states had lost their sovereignty in the *Reich* they had not lost their statehood. This conception is,

Ritchie quotes with approval the idea of G. C. Lewis that "irresponsibility" applies more to the electorate than to parliament. *Ibid.*, pp. 389-90. See W. J. Brown, *The Austinian Theory of Law* (London, 1912).

[28] See Emerson, *op. cit., passim;* Léon Duguit, "The Law and the State", *Harvard Law Review*, Vol. XXXI (1917), pp. 1-185.

[29] Merriam, *op. cit.*, ch. vii. Emerson, *op. cit.*, p. 51, declares: "As the 'basic idea' of his reconstruction of public law in terms both of its necessary concepts and of the modern state, Gerber put forward the personality of the state, a personality not analogous to or derived from that of private law but unique and original in public law." It may be observed that the idea of subjective right, while more prominent in German than in other theories, is present in most of the interpretations of sovereignty.

[30] J. K. Bluntschli, *The Theory of the State* (translated from the 6th German edition, Oxford, 1892), Bk. VII, ch. ii.

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of course, a peculiar adjustment of the Germans to their own situation.[31]

With the exception of the suggestion of monarchical sovereignty, the German theory is a denial of the sovereignty of an organ, and it is likewise the negation of the principle of popular sovereignty or national sovereignty. Those jurists, like Waitz,[32] who asserted the American principle of divided sovereignty, did not succeed in getting their position accepted. The world of the German jurists, isolated perhaps in their kingdom of jural postulates, was dominated by the assumption of an undivided sovereignty, though there were differences of opinion as to the exact relation of the states to the total German state in the expression of this sovereignty.

A further original statement of the principle of sovereignty which is of historical importance is to be found in the American doctrine of divided sovereignty. The American principle is one of constitutional organization and the distribution of the powers of government.[33] Sovereignty is viewed in fact in this doctrine as the totality of governmental powers, rather than as an attribute or a subjective right; these powers may be distributed to organs of final jurisdiction, subject to the reservation of some competence for the settlement of conflicts as to jurisdiction. This doctrine contrasts sharply with the German

[31] Emerson, *op. cit.*, pp. 100 *et seq.*; W. W. Willoughby, *The Fundamental Concepts of Public Law*, ch. xv; Mattern, *op. cit.*, p. 146, remarks: ". . . the term Staatsgewalt is applied in German jurisprudence to denote the supremacy of the State in the sphere of constitutional law, covering the activities of the State within the sphere and reach of its own territory. The term Souveränität is used to describe the independence (Unabhängigheit) of the State in relation to other States, i. e., in international relations and law." However, this usage is not uniform among German writers. *Ibid.*, p. 147.

[32] Emerson, *op. cit.*, pp. 94-95.

[33] This point of view dominates the discussions of the new federal system in *The Federalist*. In No. LXII, it is stated: ". . . the equal vote allowed to each State is at once a constitutional recognition of the portion of sovereignty remaining in the individual States, and an instrument for preserving that residuary sovereignty." In No. XL Madison affirms that the principle of the Articles of Confederation that "the States should be regarded as distinct and independent sovereigns" is preserved in the Constitution. For the influence of this doctrine on German thinkers, see Merriam, *op. cit.*, ch. x; Emerson, *op. cit.*, ch. iii. Bryce, *op. cit.*, pp. 520-22, accepts the principle of the division and limitation of legal sovereignty.

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theory in that the personality of the state is not an essential ingredient, though recognition of this idea has been given by the Supreme Court of the United States.[34] The principle of the Founding Fathers was that sovereignty could be divided, and in so far as sovereignty has continued to be regarded as a congeries of governmental powers exercised under constitutional restraint, the doctrine has survived. Sovereignty was divided between the states and the United States by the constitution itself, though there was conflict until after the Civil War as to the proper organ or organs to settle disputes of competence. The state rights view was that the states should make such decisions, while the nationalists believed the Supreme Court to be the proper organ. While German theory developed the idea of the non-sovereign state, many of our publicists and judges continued to look upon the component commonwealths in the federal union as states and as having sovereignty.

There is no question but that the concept of divided sovereignty is dying a slow death, if it is not already dead. The Southern contentions of the indivisibility of state sovereignty and the right of secession forced the national government in fact to assert the sovereignty of the nation and the principle of unity embodied in the constitution. It cannot be said that we have reached a doctrine which postulates state sovereignty in the German sense, and our complex system of governmental organization makes it difficult for us to assume that any one organ is the possessor of sovereignty, unless it be the system of organs which can amend the constitution. We have, no doubt, replaced the older theory of divided sovereignty by a

[34] See Willoughby, *The Fundamental Concepts of Public Law*, p. 51. In Poindexter *v.* Greenhow, 114 U. S. 270, the Supreme Court remarked that "The State itself is an ideal person, intangible, invisible, immutable. The Government is an agent, and within the sphere of the agency, a perfect representative. . . ." It should be noted, however, that the Court does not explicitly affirm that the personality of the state is purely juristic, and it was further observed that "both Government and State are subject to the supremacy of the Constitution of the United States and the laws made in pursuance thereof." If this observation is correct it may be contended that A. D. Lindsay's principle of the sovereignty of the constitution more nearly fits this interpretation by the Supreme Court than the conceptions advanced by Professor Willoughby. See Rockow, *op. cit., passim;* Lindsay, *op. cit., passim.*

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theory of the legal sovereignty of the constitution which is exercised through a complex of state organs. But it is a sovereignty which is organized hierarchically internally, and has within it the power of adjustment to new situations.[35]

What we have tried to do in these brief notes is to indicate that there are at least four major historic conceptions of sovereignty which have been accepted and formally acted upon in the public law of modern states. The fact that each of these doctrines has endured for a time, or endures at the present time, shows that in all probability they are ways in which the unity of the state as an institutional fact may be legally expressed. These doctrines have been realities because they have been the basis of governmental action, and the diversity and prevalence of the idea of sovereignty itself indicates that there is a universal urge toward the formulation of a legal basis for the manifestation of the coherence of political life.

Those doctrines which involve the idea of social sovereignty in contrast with juristic sovereignty are interpretations, in fact, of the social basis of the unity of the state. They touch more upon the morality than upon the legality of politics. For purposes of contrast certain of these notions should be mentioned. When Duguit traces the validity of law to the facts of social solidarity, or when Krabbe sees the validity of law in the content of the sense of right of the community, whether national or international, theses as to the proper social values to be recognized in the organization of the state are being advanced. The principle underlying the Russian dictatorship is the justice of the sovereignty of a class, the proletariat, while Fascism and National Socialism seek the unitary principle of society in the historically organic and the culturally and racially organic nation respectively. Likewise, from Rousseau to Bosanquet the

[35] It is thus suggested that Lindsay's theory of the sovereignty of the constitution is well adapted to the American political system. Lindsay remarks (*op. cit.*, p. 243): "The main fact about all modern constitutional governments is not that the bulk of society obey certain persons, but that they accept a certain constitution." Lindsay regards constitutional principles more as positive morality than as commands of the sovereign. The sovereignty of the constitution connects the social and juristic aspects of the state by a general adherence to a definite principle of settling disputes.

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Idealists have sought the social foundation of the state in the conception of a general will, which is certainly unitary by definition.[36]

But the most far-reaching of all the social theories of sovereignty is the liberal doctrine of popular sovereignty, which goes back historically to the principles of the social contract and natural rights. Implied in the social contract and in national sovereignty is the right of the individual to a measured participation in political life. As T. H. Green suggests in his *Lectures on the Principles of Political Obligation,* each individual must be given the opportunity to contribute to the general will. Popular sovereignty is primarily a doctrine of the unity of the state itself, and aside from the principle of national sovereignty few attempts have been made to identify the actual expression of public opinion with the formal declaration of the will of the state.[37] It is the keystone principle of

[36] Lindsay, *op. cit.*, p. 238, classifies the theories of sovereignty as determinate and indeterminate, the latter being those which vest sovereignty in the nation, the state (as a person) or in the general will. He does not see, however, any conflict between the ideas of Bosanquet and Austin, since the former's elaboration of the concept of a general will need not be regarded as a theory of sovereignty in fact. See A. D. Lindsay and H. J. Laski, "Symposium: Bosanquet's Theory of the General Will", *Aristotelian Society,* Supplementary Volume VIII (1928), pp. 40-41. Since Bosanquet indicated that the general will and public opinion are not identical, his theory of the sovereignty of the general will cannot be regarded as an interpretation of popular sovereignty. *Ibid.*, p. 36. Hallis, *op. cit.*, p. 244, has affirmed that we do not need to assert sovereignty as the highest subjective right of the state will, since the sovereignty of the state "is the sovereignty of its ideal purpose." This author (pp. 23-24) classifies the kinds of sovereignty as the sovereignty of the law, the sovereignty of the state, and royal sovereignty. Sovereignty, he declares, is not in essence bound up with the metaphysics of subjective right.

[37] The modern Chinese theory of sovereignty as advanced by Sun Yat-sen must be accepted as a doctrine of national sovereignty very much on the French model. If such devices as the initiative, the referendum and the recall, as well as the suffrage, may be regarded as primarily consistent with the French theory, then there is no question about the above statement, since these devices will enable a coincidence to be realized between opinion and the law. These views must be qualified, however, by the fact that the preliminary dictatorship of the Kuo Ming Tang is accepted as a matter of doctrine. Sun Yat-sen, *San Min Chu I* (*The Three Principles of the People*) (Shanghai, 1928), Part II. See Kong Chin Tsong, *La Constitution des cinq pouvoirs* (Paris, 1932), pp. 10-11, for insistence on the originality of Dr. Sun in distin-

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social or political as contrasted with legal sovereignty. Thus Dickinson declares:

> Professor McIlwain performs a welcome service in insisting that the two ideas [political and legal sovereignty] are quite distinct, and directed to altogether different problems. Juristic sovereignty denotes only the existence of a definite organ for drawing the line between what is and what is not law. Political sovereignty has reference to the forces, or rather some of the forces, which operate on the juristic sovereignty to determine it where to draw this line.[88]

What conclusions should be drawn from the above discussion? It should be repeated that on pragmatic grounds the attempt to universalize any one explanation of the legal manifestation of the unity of the state or the foundations of its formal or positive law goes against the existence and successful practice of a number of monistic theories. Thus monism must be localized, just as the pragmatic attack on sovereignty should recognize in principle that it is difficult, if not impossible, to universalize the attack on sovereignty. A relativistic monism must accept the fact that there are situations in which a given interpretation of the theory will not apply, and that there may even be circumstances in the breakdown of the coherence of the state implying the non-existence of sovereignty.[89] It may be recognized, furthermore, that there are situations in which

guishing the people's sovereignty from the power of government (the five-power constitution). On p. 23 this author observes that, in contrast with the West, the theory of Dr. Sun will enable a genuine democracy to be attained in China.

[88] Dickinson, *op. cit.*, Vol. XLII (1927), pp. 532-33. In connection with this distinction see Bryce, *op. cit.*, pp. 511-15; A. V. Dicey, *The Law of the Constitution* (8th edition, London, 1915), p. 71; Ritchie, *loc. cit.*; Willoughby, *The Fundamental Concepts of Public Law*, p. 112. Mattern, *op. cit.*, p. 59, believes that the use of the distinction between legal and political sovereignty in England indicates the acceptance of the theory of national sovereignty. He distinguishes popular sovereignty from national sovereignty by showing that the latter implies that sovereignty is vested in the nation as a state, while the former conception leads more directly to the right of revolution. Popular sovereignty means to him the supremacy of the masses rather than the citizen. *Ibid.*, pp. 26-30.

[89] Dickinson, *op. cit.*, p. 548.

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none of the theories of sovereignty seems to apply, as in the case of mandates under the League of Nations. The very existence of such anomalous relations shows the need of a pragmatic and localized conception of monism. As a general principle, it may be added that when a monistic theory does not vest juristic sovereignty in the state as some sort of legal person or in the general will which is the moral personification of a common interest, juristic sovereignty must be vested in some organ or organs of government. While with the pluralist it may be admitted that there have been times when sovereignty has ceased to exist, we must take the position that monism, as an historical fact, has taken several validly different forms.

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SOCIAL SECURITY AND THE GENERAL STRIKE

ANY phenomenon which threatens the security of society is likely to be a subject of interest to the student of government and to the general citizen. A sympathetic strike on a large scale, occurring in many "key" industries at the same moment, is without question one of the most serious threats to social security. From the days of Richard Pilling's general strike (the so-called "Plug Plot") in the Chartist period of British history, down to the general strikes in Spain, Cuba and the United States during the years 1930-1934, there have been over thirty instances of the use of this labor weapon, and no continent has been exempt.

It is generally admitted that the advance of science since the beginning of the Industrial Revolution gradually placed society at the mercy of a comparatively small number of skilled technicians and operators. It is not so widely acknowledged that the latest examples of invention have tended to reverse this trend. Society is today not quite so helplessly unprotected against strongly organized labor during a general strike as it was two or three decades ago. Thanks to the more recent inventions—the automobile, the radio and the aeroplane—even railroads and the press can now be dispensed with, at least for a short period, without dire results upon the security of society.

A natural reaction, moreover, to the effects of scientific invention upon the security of society, has been the rapid recent growth of citizens' protective organizations. Citizens who have not been affiliated, by desire or necessity, with a trade-union organization, have proved that they were unwilling to remain passive umpires between the conflicting forces of capital and labor, or of labor and government, once their own comfort and security were endangered.

Probably the most remarkable difference between the life of a century ago and that of today is the almost complete depend-

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ence of the contemporary citizen, in an urban district, upon far distant sources for his supplies of food, fuel, clothing and housing material. The primary means of transportation for these necessities of life are still the railroad and the steamship. Modern science has doubled the importance of transportation by the development of refrigeration, which enables food to travel from yet more distant spots and still be in good condition upon its arrival at the terminal markets and storehouses.

The increased use of the newer structural and building materials, from reinforced concrete to chromium steel, has permitted the erection of taller aggregations of buildings than ever before in human history. This development of applied science has tended to increase the density of urban population. Density of population, in its turn, provides intensive markets for large scale organizations concerned in the production and distribution of food, fuel, power and other necessities of social life. These huge urban conglomerations of population have, indeed, called for a change in the methods of food production as drastic as the change in the habits of consumption. Agricultural machinery, large scale farms and truck gardens, vast plantations half across the world from the ultimate consumer, are all instances of this modern trend.

The media of intercommunication, other than transportation, have also been developed largely as a result of this closely packed population of modern urban areas. The telephone, the rotary press, the teletype machine, and telephotography are cases in point. Every one of these inventions would have been slower in development had the country consisted of nothing but sparsely populated areas, each fairly self-dependent.

All of the changes outlined above have made for increasing dependence of society upon relatively small groups of skilled technicians and operators. A natural catastrophe such as a flood, an earthquake, or a tornado; a great war; wholesale banditry of racketeers; or a general strike of organized labor, can reveal to the average citizen with vivid and terrible clarity the degree to which his life is at the mercy of specialized groups of other human beings, often hundreds or thousands of miles away. With comforts and with protection against the ordinary

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and milder perils of nature vastly improved during the past century, the price paid by the ordinary citizen for such seeming security is a greater underlying insecurity, due to his technological dependence upon certain "key" groups of workers.

It was the recognition of this dependence that made pre-war governments strain every nerve to keep railroadmen at work during any period of threatened sympathetic strike; successfully in the great strikes in Sweden and Belgium, but unsuccessfully in Russia. For a similar reason a heavy subsidy to the the British coal industry was forced from the Baldwin Cabinet in July 1925, at the gunpoint of a threatened general strike. That subsidy was yielded because the British government's emergency transportation scheme was quite unready for such a crisis at that moment.[1]

With the defeat of the British national strike of May 1926 it became evident that the technological insecurity of society, produced by modern applied science, was being modified by the newer inventions, as far as the general strike weapon was concerned. Oil-burning ships, no longer dependent upon the frequent replenishment of their coal-bunkers; canned food supplies that did not require refrigeration for their preservation; aeroplanes for the swift movement of governmental executives, medical supplies and important mail; radio to the homes of most citizens (and, more recently, to moving autos and aeroplanes); but above all the automobile itself, in all its forms from private car to freight truck or army tank: all of these newer inventions were used in the British or in other more recent general strikes.

The *centrifugal* effect of these more recent inventions has not, perhaps, been fully realized as yet. In the earlier general strikes it was enough for organized labor to hold up the main lines of railroad transportation, and to close the coaling facilities at the docks, and the public was almost helpless unless the government resorted at once to military force. In the British strike, however, the specific instructions of the emergency road transport authorities were to *scatter* the supply vehicles, when-

[1] Glasgow, *General Strikes and Road Transport*, p. 101; W. H. Crook, *The General Strike*, pp. 292-98.

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ever trouble was expected, rather than to run them in convoys along one main route. The purpose of such an order was to ensure the majority of the automobile food-trucks reaching their destination, if not by the direct route, then by several less frequented roads. Only in a serious and rather unusual situation, such as that which occurred around the narrow streets leading to the London Docks, was the armed convoy relied upon to break through the picket lines.

In the event of a determined use of mass picketing on the roads, one can expect, from recent events in war and peace, the application of war methods, with low-flying planes disturbing the pickets by tear-gas bombs, or even by machine-gun fire in case of serious resistance. Orderly as was the general conduct of the British strikers, the food convoys to and from the London Docks included military tanks and armored cars. Happily the good nature and the sense of humor of the average Briton on both sides of the conflict prevented their actual use. That violent and military methods would be used in a modern general strike, if need arose, there is evidence in a recent general strike in Chile, where taxi-cabs armed with machine-guns were used to break the strike. Still more recently the methods utilized by state police and militia in the milk, farm and truckmen's strikes in the United States are indications of what the authorities will do.

Even the dependence until recently of the automobile (as a substitute for the railroad) upon gasoline supplies transported by rail, has now been considerably reduced by the use of gasoline trucks, with single or double trailers. By this latest development the need for unbroken railroad service for gasoline has been removed and the task of effective labor picketing against emergency transport in a general strike vastly increased.

In the matter of communication other than transportation, the demoralizing effect upon individual strikers of government control of the radio, with hourly broadcasts to the public, must be evident. It was one of the main weapons used by the British government to break the morale of the strikers. When the press has been throttled and the telegraph and telephone staffs have been called out, even the strikers themselves are

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dependent upon local mimeographed bulletins, on rumor or the radio. If this medium of communication were not already under government supervision and control it would certainly be one of the first "essential services" taken over by the government in the event of a general strike.

Enough has been adduced to show that the earlier insecurity of society has to some degree been alleviated as a result of these newer means of transportation and communication; *always provided that a sufficient number of skilled technicians and semi-skilled operators can be found to run the absolutely essential social services, for the duration of the general strike.*

The phenomenal growth of citizens' protective organizations of various kinds in recent years gives one reason to believe that these technicians and operators may be forthcoming from the ranks of the citizens. Inasmuch as *time* is the crucial element that usually decides the fate of a general strike, the ability of the non-striking citizens to run the needed services for at least a short period is a most vital gain to society's security, unless labor recognizes the revolutionary logic of the general strike weapon and social conditions are ripe for a revolutionary coup such as occurred in Spain and, more recently, in Cuba.

After the comparatively successful general strike in his own country in 1913, the Belgian sociologist Van Overbergh warned the upper and middle classes of Europe that against the general strike weapon "they must find a means of defense or be conquered and crushed". Subsequently Belgian citizens formed a civic corps of strike breakers to aid various public services, from police to hospitals, should a repetition of the previous general strikes occur.[2]

Some years before Van Overbergh announced his discovery, the citizens of Sweden, outside the ranks of the trade unions, had already experienced the need for such defense against the dangers of a general strike. When a strike broke out in 1909, as protest against the growing use of the lock-out by employers' associations, contracts were broken, agricultural workers were appealed to in time of harvest, even the grave-diggers went out

[2] Van Overbergh, *La Grève générale*, p. 452; *U. S. Monthly Labor Rev.*, Vol. XI, p. 395.

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on strike. The resultant feelings of fear and irritation on the part of the rest of the citizens led to the creation of the Public Security Brigade. At that time the automobile had not reached anything like the present stage of development. Noblemen and army officers drove cabs, merchants and stock-brokers aided in ambulance work, civil servants and college undergraduates acted as street car conductors or dock laborers, and civil engineers attended to the gas, water and electric light plants, or functioned in the stokeholds of steamers.[3]

In post-war general strikes the rise of citizen organizations was even more common. In Germany as early as 1919 an engineer named Lummitsch founded the *Technische Nothilfe* with volunteers from engineering and trade schools and operated the Berlin electrical plants despite sabotage. In 1921 out of every hundred members this organization counted 22 farmers, 18 technical specialists, 18 professional men, 15 laborers, 11 women, 10 craftsmen and 6 students.[4]

In Seattle, Washington, before the strike of 1919 was called, an under-cover citizens' organization, of war-time origin, already existed. The Minute Men, as this group was called, were in a position to learn the inner purposes of the labor movement. Some were members of the trade unions, others held positions in the city's banks, and were able to produce photostats of checks signed by the executives of the Soldiers' and Sailors' Council. Still others were employed as *agents provocateurs,* to "get something on" the radical labor leaders. One such agent, member of a committee of the Soldiers' and Sailors' Council which drew up a constitution, did his work so "efficiently" that, when he got through, the Council "had a document that would have sent to the penitentiary any man who had put his name to it".[5]

[3] T. H. Penson, "The Swedish General Strike", *Econ. Journal,* Dec. 1909; London *Times,* Sept. 1, 1909.

[4] Adolph Weber, "Arbeitskämpfe", *Handwörterbuch der Staatswissenschaft* (4th ed.), Vol. I, pp. 776-8. *Cf. New York Times,* Nov. 16, 1930, p. 4E; *U. S. Monthly Labor Review,* Vol. X, p. 1059.

[5] Kenneth MacGowan, "The Minute Men Clan", New York *Tribune,* March 13, 1919.

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Before the general strike broke out, that same year, in Winnipeg, Manitoba, there had been a widespread discussion of its possible use by the ranks of labor. A citizens' organization of one hundred was, therefore, already in existence, and was promptly expanded into a body of one thousand when the strike actually occurred. When the regular firemen went on strike a volunteer brigade promptly took their places. Three shifts of citizens, under the command of engineers, handled the high pressure water plant. When the workers in the domestic water supply plant walked out in protest at this action, another citizen band took their places also.

Frequent fire alarms followed, to annoy the new volunteer fire brigade. The citizens' body was compelled to meet this situation with an organization for the protection of the fire alarm boxes, along with a fleet of sixty automobiles to serve the fire department. A larger fleet of autos was then raised, consisting of seven hundred autos and their drivers, divided into one hundred units of six drivers and a captain. The captains met daily and carried their orders to their own units. Assembly points through the city were assigned, where, in the event of a general alarm, each unit would be ready to place itself under military orders. In the meantime this large motor fleet served to carry the mail, distribute the daily citizens' news-sheet, and to transport the hospital, military and telephone staffs.

A militia of three thousand citizens and a special police force of returned soldiers took the place of the regular police when the latter joined the strikers. The existence and acts of this Citizens' Committee of One Thousand hardened the spirit and resistance of the labor ranks, stiffened the attitude of the city authorities toward the strikers, and in general prolonged the strike, which lasted for over six weeks. Yet without that Citizens' Committee Winnipeg would undoubtedly have been at the mercy of the forces of organized labor.[6]

The threat of a general strike in August 1925 found the British government unready with any adequate emergency

[6] *Activities and Organization of the Citizens' Committee of One Thousand* (Winnipeg); *Winnipeg General Strike* (published by the Defense Committee); W. H. Crook, *op. cit.*, pp. 546-49.

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transportation. The coal industry subsidy, lasting for nine months, bought off the peril until May 1926, by which time both the government and certain groups of citizens were better organzed. The government's elaborate scheme of road and rail transportation, the distribution centers for food and milk, such as that in Hyde Park, and the use of the army and navy, have been recounted elsewhere.[7] Mention should be made here, however, of the two organizations of citizens.

On the extreme right wing were the so-called British Fascists, recruited from groups and individuals more noisily patriotic than intelligent. They admitted that they were armed and that they submitted to weekly drill, but declared that they would remain "constitutional" as long as the government did its duty. They were commonly held responsible for a night raid on the London headquarters of the Communists and for the theft therefrom of certain documents. Their financial resources were reported to come from various citizens' leagues in which were included some five hundred leading industrial firms.[8] In general these Fascists were looked upon by the national and local authorities as too extreme to be of much use, not unlike the militant Communists at the other end of the scale.

A far more responsible and constitutional group was known as the O. M. S. or Organization for the Maintenance of Supplies. It was less bitterly partisan than the Fascists, received no public funds and professed to be non-political. It did not aim to intervene in strictly economic disputes between employers and their workers, and it refused to have as its executive officers any great industrial magnates. Ex-viceroys, ex-ambassadors, army and navy men were prominent on its council. The technical training of this body of volunteers met many obstacles. Railroad, trolley and bus companies refused any coöperation, lest their regular workers go on strike. Certain plants with private railroads offered their locomotives to the O. M. S., but

[7] Glasgow, *op. cit.*, Archibald Hurd, "The Navy on Active Service", *Fortnightly*, July, 1926, pp. 87-101.

[8] "La Préparation bolchéviste de la grève anglaise", *La Revue de Paris*, May 15, 1926. (Written from a violently anti-communist viewpoint, and therefore presumably a source friendly to the Fascists.)

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only at long intervals and in secret. The O. M. S. was compelled to purchase motor trucks of its own for training, and to use factory testing grounds during vacations, in order to maintain the secrecy of their preparations.[9] After seven months of energetic work the O. M. S. was able to present to the government, when the general strike broke out, a list of one hundred thousand available members.

Spain provides a recent instance of the repeated use of the general strike weapon, sometimes at intervals of only a week, and the natural growth of public hostility to such labor tactics. At first the major portion of the population appears to have remained neutral, though a few Catholic civil organizations raised a protest. Once the Republic had been declared and the king had been compelled to abdicate, the socialists and republicans, who had been favorable to the use of the general strike for this purpose, now found themselves faced with communist-anarchist groups who proceeded to call general strikes in city after city in the interest of a "complete proletarian revolution". Popular opposition to the general strike steadily increased as its abuse became evident. Finally some of the union leaders, tired of the anarchist-controlled, violent general strike epidemic, called upon their fellow union members to work soberly for a social revolution, but not to be misled by the doctrine that sporadic acts of violence could bring a proletarian government. Such tactics, they declared, led only to a dictatorship; a viewpoint plainly supported by the preceding data on the formation of citizens' protective groups.

It is of course questionable if citizens' organizations can ever hope to replace permanently the skilled workers whose lifetime trade they have temporarily assumed. The heavy repair expenses to which British railroads were put after the great strike of 1926, showed that even trained volunteers are not as skilled technicians as regular trade-union engineers. It is evident, however, that volunteer technicians can be of great aid in keeping the essential public services running for the

[9] Col. Romain, "La Lutte contre la grève générale en Angleterre", *La Revue Hebdomadaire*, Nov. 6, 1926, pp. 77-81.

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actual duration of the dispute. If society can gain time in such a crisis, it will be better able to defeat a general strike.

The changing effect of the more recent inventions and the growth of citizens' protective organizations together tend to make society more secure against the general strike weapon, unless, as has been suggested above, labor frankly recognizes and accepts the revolutionary logic of that weapon.[10] In the event of such clear recognition the success of a revolutionary general strike would depend on the benevolent neutrality of the non-union citizens, and on the active support of the army and navy. This was the case in Cuba where President Machado was forced to flee before the overwhelming hostility of labor, citizens and the military. Some hint of the fate that would be meted out to a consciously revolutionary minority, which could not count upon such public support, can be found in the savagely illegal attacks by "vigilantes" upon all allegedly "red" centers, clubs and private homes during the San Francisco general strike. In such an event it is evident that a determined government, local, state or federal, would simply crush the revolutionary strikers with an appalling loss of life.

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[10] W. H. Crook, "The Revolutionary Logic of the General Strike", *Amer. Pol. Sci. Rev.*, August 1934.

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THE POLITICAL CONTEXT OF THE TARIFF COMMISSION

WOODROW WILSON once referred to the tariff as the football of politics. His metaphor was apt. Certainly no issue in this country has been the occasion of more intense partisan struggle nor involved more maneuvering among competing economic forces. It has provided the public with a gaudy spectacle of rough and tumble politics, with not infrequent resort to deceptive and undercover plays. Yet the tariff, the center of so much conflict among politicians and business men, has now for nearly two decades been the raison d'être of an independent administrative agency. The Tariff Commission has had a continuous existence since 1916, when it was hailed hopefully as the device for taking the tariff out of politics. The tariff needless to say has not been evicted from its congenial habitat. But what of the Commission?

The situation of the Tariff Commission is particularly interesting if viewed as a problem in public administration. It is paradoxical to see a governmental bureau set itself to consider a problem so fraught with political dynamite as the tariff. What is the experience of an administrative agency when it addresses itself to a question touching powerful and persistent business interests and involving the convictions of political leaders?

The effort will be made here to depict the Tariff Commission in its political context and to show how its complexion and its activities have been affected by the social forces and economic interests impinging upon the Commissioners. This approach may indicate the significance of examining the environment within which a given bureau operates if an understanding of administrative problems is sought.

The task of the Tariff Commission is peculiarly difficult because of the very nature of the tariff as a political issue.

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Granting that a tariff policy could be agreed upon by experts and brought to general public acceptance upon the basis of its intrinsically sound merits from a purely economic viewpoint, its political implications would give rise to acute difficulties. Even a tariff for revenue only would involve technical problems of rate-fixing and classification of commodities that would in turn awaken importers and manufacturers to struggles for advantage within this relatively restricted field. Although lip service has at times been popularly given to tariff slogans, no definite, clear or generally satisfactory economic criterion for fixing schedules has been established in practice.

The weighing of politico-economic considerations such as the encouragement of infant industries, protection against dumping, equalizing the cost of production, or evaluation upon a basis of domestic prices, has enormously broadened the possible basis for fixing a policy. Vague interpretations of the public welfare have served further to befog the issue by introducing such contradictory concepts as national self-sufficiency and the stimulation of foreign trade through tariff bargaining. One can trace a tendency toward greater or less protection through the manipulation of schedules, but it would be difficult to discover a consistent tariff policy as formulated and executed by Congress.

That our tariffs are not written by Congress but rather by the industries concerned, serves to explain the legislative confusion but scarcely exonerates the politicians unless the impossibility of following a declared tariff principle is admitted. However, even where Congress has been influenced by an enunciated policy in tariff revision, the actual fixing of rates has necessarily taken place not only at a level of technical expertise beyond the competence of most congressmen but also under conditions requiring an immediacy and intimacy of negotiation impossible for a legislative assembly.

It was these technical difficulties in the framing of tariff legislation that were in large measure responsible for the creation of the Tariff Commission.

As far back as 1866 the need for expert advice was recognized when the office of Commissioner of Revenue was created. In

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1882 a temporary Commission was established to prepare for the general tariff revision then in prospect, and in 1888 indirect efforts were made by undertaking cost of production studies in the Department of Labor. Under the Tariff Act of 1909 President Taft was authorized to "employ such persons as may be required" to assist in administering the maximum and minimum provisions of the Tariff Act.

Organized agitation to create a Tariff Commission started in 1907 and 1908 through the adoption of resolutions by the Merchants' Association of New York and by the National Association of Manufacturers urging that Congress institute a permanent non-partisan agency to collect and report upon facts pertinent to the tariff question. The year following a convention was held in Indianapolis and was attended by representatives from various parts of the country and by spokesmen from two hundred national and commercial organizations. A consensus of opinion emerged from the discussions held at this convention and a committee was charged with the task of carrying forward the purposes of the convention as expressed in the resolutions. This committee set about effecting a permanent organization. The National Tariff Commission Association was the result. The president selected was a man reputed to have done "effective work in Washington in securing in the Payne-Aldrich Bill the provision for the Tariff Board". The other officers were men informed in tariff matters and enthusiasts for the cause. Systematic efforts were made to affiliate chambers of commerce and national commercial organizations with the Association. Meetings were held, speeches made, resolutions passed, publicity provoked.

A committee composed of six representatives of national associations of manufacturers and business men working through the National Tariff Commission Association asked President Taft for permission to examine the work of the Tariff Board. After examining this body, they reported very favorably, lauding the work accomplished and expressing the belief that there remained "no single doubt as to the expediency of maintaining it as a permanent function of the Government for the benefit of all the people." The report of this Committee

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was used in the effort to establish a permanent Tariff Commission.[1]

President Taft's message to Congress in 1910 aided the cause.

> The request of the President for an appropriation for the continuance of the work of the Tariff Board and the public interest aroused by the efforts of the National Tariff Commission Association to impress upon Congress the necessity of continuing on a business basis to secure correct information to assist Congress in the preparation of any Tariff Bills, led to a general discussion of the pros and cons of the measure which was more than frequently permeated with heated arguments. It was at this time and during the months of April and May that it began to be apparent to the members of Congress of both parties, that the business men of the country were earnestly endeavoring to obtain legislation, not only covering the appropriation asked for, but for the definite creation of a Tariff Commission as a government function.[2]

In June 1910 the Association brought to the capital hundreds of business men, manufacturers and representatives of trade associations to urge upon Congress the passage of some satisfactory form of tariff commission legislation. The political parties at length gave recognition to the movement. The Progressive Party in 1912 [3] advocated the establishment of a non-partisan scientific tariff commission with "plenary power to elicit information." The Republicans [4] condemned the Democratic party "for its failure either to provide funds for the continuance of the tariff board or to make some other provision for securing the information requisite for intelligent tariff legislation."

The findings of the tariff board established by the Republicans were disregarded by the Democratically controlled Sixty-third Congress (1913-15). But the varied and far-reaching

[1] *Congressional Record*, June 6, 1912, p. 7754.

[2] *Scientific Tariff Making*, a history of the movement to create a tariff commission, by Henry Tarleton Wills, secretary of the National Tariff Association, 1913, p. 97.

[3] Kirk Porter, *National Party Platforms*, p. 346.

[4] Platform 1912, *ibid.*, p. 355.

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economic changes brought about by the war convinced the Democrats by 1916[5] of the need for a non-partisan tariff commission "to make impartial and thorough study of every economic fact that may throw light either upon our past or upon our future fiscal policy with regard to the imposition of taxes on imports or with regard to the changed and changing conditions under which our trade is carried on." Under the urging of President Wilson Congress finally passed the act of September 8, 1916 creating the present Tariff Commission.

This body from its inception has been an anomaly. Politically its creation was a concession to the clamor of some business interests desirous of mitigating sharp trading in tariff matters, but actually Congress had no intention of surrendering its powers over rate-making. The purpose of this agency was simply that of collecting information so that Congress could frame schedules upon a factual basis "rather than in accordance with the demands of selfish interests or upon information provided largely, if not exclusively, by them."[6] The Commission was given wide powers for investigation but no authority for changing schedules. Nevertheless, great precautions were taken to insulate it from political influences. Although its duties might have been performed by one of several existing agencies it was felt that the difficulties attendant upon considering tariff matters warranted special safeguards. Accordingly, a bi-partisan board of six commissioners was created with their term of office fixed at twelve years.

During the early years of the Commission no political difficulties obtruded. Professor Frank W. Taussig, an economist of established reputation, was made chairman, and much of the time during his incumbency was given to the problem of personnel. By 1919 a competent staff of experts had been developed. The exigencies of the war period limited the work of the Commission somewhat, but improvements relating to technical affairs of administration were suggested and a mass of trustworthy information on tariff problems was made avail-

[5] Democratic Party Platform, *ibid.*, p. 375.

[6] *Ibid.*, p. 375.

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able. The work of the Commission in this limited field was found of genuine value.[7]

When in 1921 Congress again tackled tariff revision, chaotic post-war conditions made the problem of rate adjustment peculiarly complex and House and Senate toiled and tugged for some twenty months in framing a bill. Schedules were greatly boosted while a critical press barked its protest. Congress, moreover, did not make full use of the Commission's data and the old abuses in tariff-making persisted. The feeling grew that there was a greater need of expertise.

Those distrustful of Congress and disgusted with the spectacle of log-rolling loudly advocated a "scientific" method of tariff-making. The blatantly protectionist complexion of the Tariff Act of 1922 caused some forebodings even among the Republican leaders and President Harding himself was desirous of having something moderate and conciliatory to point to in the new law. Granting authority to the Tariff Commission for the "adjustment" of schedules answered this purpose.

This new task was based upon a theory that tariff schedules could be fixed by formula and determined automatically by an impartial board of experts. The idea was supported actively by the Chamber of Commerce of the United States and strongly urged by sympathetic congressmen.

Political expediency combined with the demands of business interests to saddle upon the Commission its novel responsibilities. The statute authorized that a thorough investigation be made of the cost of production of articles competing with American manufactures. The President then acting upon the recommendation of the Commission was to adjust the duty in order to equalize production costs for the benefit of the American producer. Determining costs, however, means selecting evidence and hence value judgments must be made.[8] The exer-

[7] T. W. Page, *Making the Tariff in the United States*, p. 37; F. W. Taussig, *Tariff History of the United States*, p. 481 *et seq.*

[8] Economists have so clearly demonstrated the limitations of the cost-of-production formula that it need not be discussed here. See especially F. W. Taussig, *Free Trade, the Tariff and Reciprocity*, ch. vii, and T. W. Page, *Making the Tariff in the U. S.*, ch. iv. For a defense see "The Making of Tariffs" by Wm. S. Culbertson, *Yale Review*, Jan., 1923. See text of author-

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cise of discrimination is an unavoidable part of the process. How determine cost? No figure automatically emerges.

As a result of the so-called "flexible provision" of the 1922 statute the Commission was placed in an entirely new context. To the extent that it dared to exercise its powers it would become liable to attacks from the same quarters that influenced Congressional tariff-making. Since the Commissioners were called upon to use their own discretion, their private prejudices and their known views on tariff policy became of political importance. Tariff policy could not be determined by Congress while the actual rates were fixed by an independent agency. As Commissioner Page has stated: "The only means by which Congress can enforce the interpretation which it wishes to apply is by naming the duties through which its policy will be put into effect." [9]

The adjustments the Commission recommended to the President were not to change the duty set by Congress beyond fifty per cent up or down nor could the free list be changed at all. By this device Congress avoided an unconstitutional delegation of powers, but it did not clarify the scope of the Commission's actual power. The immediate impact of special interest was deflected from the legislators but the pressures of economic and political forces were no less severe.

To charge an administrative agency with discretionary duties in interpreting so highly controversial a subject as the tariff was to invite trouble. And difficulties soon developed. By 1926 a Senatorial investigation into the administration of the flexible provisions was under way. It was abundantly demonstrated that the Commission had functioned in a far from judicial manner. Cost-of-production investigations were undertaken at the behest of commercial interests acting through the President and the Senate. On several products of trivial importance the tariff was lowered, while the reports on investiga-

ized statement by Commissioner Brossard in *U. S. Daily*, March 28, 1930, before Inquirendo Club, Washington, D. C.: Experience with flexible provisions of tariff law has "proved practicability of adjusting tariff rates by administrative action", *Index*, p. 282: 1.

[9] T. W. Page, *op. cit.*, p. 47.

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tions of important products were delayed. The Commissioners differed among themselves in regard to tariff policy and the President lent his support to the high protectionist faction. Those who were disinclined to maintain high rates were placed under great pressure to change their attitude. Commissioner Lewis, for example, was requested, when the time came for his reappointment, to leave an undated letter of resignation which President Coolidge might make effective at any time. When he refused, he was granted a brief and temporary appointment and later dropped. Commissioner Costigan resigned as a gesture of protest against such conditions. His letter of resignation called attention to the way in which the Commission had been obstructed in its task of tariff adjustment. Critics in Congress and through the press berated the Commission for permitting politics to appear in tariff deliberations and yet little understanding was evinced of the impossibility of expecting any body of experts to fix import schedules when they had no basic principle of tariff policy to serve as a guiding criterion. Responsibility was transferred from Congress to the administrative branch and shared by the Chief Executive and the Tariff Commission. The final word in fixing rates rested with the President, who was to act upon the recommendations of the Commissioners. This relationship was uncertain and indefinite. Disagreement among the Commissioners as to the nature of their responsibility disrupted their work. Was the Commission to be simply a fact-finding agency? Or was it to be a quasi-judicial tribunal for adjusting tariff rates in accordance with a definite statutory principle?

Commissioners Costigan, Culbertson and Lewis took the latter view, while Glassie, Marvin and Burgess held to the more limited interpretation. It was really due to this difference in attitude as to the fundamental purpose of the Commission that all the difficulty arose. The Costigan faction regarded the business antecedents of the others as disqualifying them for service upon the Commission.

Mrs. Glassie was the owner by inheritance of 144 shares ($100 par value) in the Columbia Sugar Company, a Louisiana corporation. Commissioner Costigan felt that Mr. Glassie

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because of this fact should not take part in an investigation of the sugar industry.[10] Mr. Culbertson agreed with Mr. Costigan that not only did Mr. Glassie lack the objectivity required for the proper performance of his duties but that Mr. Burgess and Mr. Marvin because of their prior connections were still too closely identified with special interests.[11]

[10] *Hearings before the Select Committee on Investigation of the Tariff Commission*, U. S. Senate, 69th Congress, 1st session, 1926, p. 288. "That his [Glassie's] relation to the sugar industry is already the subject of public comment is shown by an article which appeared in "Facts about Sugar", p. 167, as early as March 3, 1923, as follows:

"'Louisiana sugar producers were very well pleased this week when it was learned that Henry H. Glassie had been appointed by President Harding to the U. S. Tariff Commission. Although Mr. Glassie has never been directly connected with Louisiana sugar production, he has become familiar with the industry through his marriage to the daughter of the late Senator Donelson Caffery who was one of the foremost figures in the Louisiana sugar industry throughout his entire career. Bearing in mind that Mr. Glassie is a very brilliant man and that he is thoroughly familiar with the needs of the Louisiana sugar industry, the planters heartily approve the President's selection.'"

[11] *Cf. ibid.*, pp. 567-9, for Mr. Culbertson's interpretation of the background of his colleagues:

"Mr. Burgess has had a lifelong connection with the pottery industry, not primarily as a manufacturer but chiefly as a representative in customs matters and as a lobbyist. For many years he was the Vice President and an employee of the United States Potters' Association. He has represented the interests of the pottery industry (not merely his own personal interest) before the board of general appraisers in New York and before Congress and the executive departments in Washington. . . . Mr. Burgess, before he was appointed a member of the Tariff Commission, practised before the Commission as a legislative agent or special representative of the pottery industry and of the electrical supplies industry. Before his appointment on the Tariff Commission he was employed as 'adviser' of the Associated Manufacturers of Electrical Supplies and represented this association in tariff matters. He has made a number of trips abroad in the interest of the pottery industry and on some occasions these trips were made with some sort of Government connection.

"Mr. Marvin's position on the tariff represents a generalization of the policy of which Mr. Burgess and Mr. Glassie are concrete examples. For approximately twelve years before his appointment on the Tariff Commission he was the secretary of the Home Market Club of Boston. In the *Congressional Record* for April 4, 1924, Senator Lodge said of Mr. Marvin:

"'Certainly he is a protectionist, and he came down here representing that organization for the purpose of advocating protection, which I think he had a right to do.'

"He was opposed to the elastic tariff section and has frankly criticized the principle of the equalization of costs of production adopted by Congress. His

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Mr. Marvin held a different view as to the responsibilities of a commissioner. He explained his idea of the Commission's duties to the Senate investigating committee thus:

> All investigations, Senator, if they are as I understand them, are fact-finding investigations. And if the Commission has no power, as I do not conceive it has, to fix rates or modify rates or even recommend rates, I do not see how a financial interest could affect the ascertainment of facts as to the cost of production.[12]

This viewpoint was a far cry from that of actual tariff-making by a scientific and impartial administrative tribunal but it was more in accord with the realities of the political situation. Congress and Presidents Harding, Coolidge and Hoover were not willing to leave the Commission "undirected" in the task of setting schedules. The liberals on the Commission held to an interpretation of their duties that was at odds with the political and economic environmental forces.

When the Commission broke down under the impact of these forces, Congress took the view that with a higher type of man upon the Commission all would be well. Bad appointments were regarded as a major cause of the trouble.[13]

Certain Commissioners had been governed by political considerations and special interests. If outside interference had been the cause of the breakdown, could officials be found strong enough to resist these influences? Congress directly con-

position at all times had been partisan, and, as in the case of the mill-feed duty, when his peculiar views of high protection came in conflict with the facts of the case and the application of the law thereto, he abandoned the latter and refused to accept the conclusions which were obvious in the record and which the other five supported.

"The appointment of three men with those records to the Tariff Commission has raised in some quarters the suggestion that an effort has been made to control the Tariff Commission in behalf of certain special interests. This presumption could have easily been overcome had the proper attitude been adopted by the men appointed. They however, assumed a right to act in investigations in which they were specially interested or in respect to the subject matters of which they had acted as representatives."

[12] *Ibid.*, p. 112.

[13] See *Congressional Record*, Jan. 13, 1931, p. 2046.

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fronted the problem of determining the proper qualifications for members of the Tariff Commission. At the same time the Senate was aware of the general importance of establishing proper qualifications for membership on other Federal administrative boards. Senator Borah raised the broad question as to what kind of men would be needed upon these bodies if administrative commissions were to prove acceptable.

> If we shall proceed to fill these commissions with men who have not expert knowledge, what shall we have done? he asked. We shall have created a body which is responsible to no constituency and yet is governed by the same influences by which Congress is governed. If we are to create commissions which are responsible to no constituency, certainly they ought to have an equipment and that equipment ought to be peculiarly an expert knowledge with reference to the subject with which they are to deal . . . .
>
> If we are to have commissions, I am in favor of letting those commissions do their work without the influence of the outside world, either from the Executive or the Legislative Department; and if they are equipped, as they should be, as experts, we can feel some comfort when a decision has been made that we have obtained the very best decision that can be reached in regard to the matter, that can be obtained through the commission form of government . . . .
>
> In all the commissions which we are creating there is going to be, unless we change our program entirely, this exertion of outside influence from one department of the government on the other or both, and the only protection against that which I can conceive is an expert thoroughly devoted to his subject, a man who, as an expert, refuses to yield upon the facts and principles. Unless we are going to create that kind of commission, I repeat, we are creating tribunals to run our government which are not responsible to the constituency of the country and which at the same time are controlled by political influence.[14]

This view is apparently based upon the assumption that the expert in government because of his technical training can arrive at the correct decision simply by applying his intelli-

[14] *Ibid.*, p. 1981.

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gence to certain definite facts. But in selecting and interpreting facts discretion must be exercised. Where the expert is charged with executing a declared policy his judgments are directed by an objective criterion and his task is simply to bring the facts into accord with the principle. It is the task of the policy-determining agency to establish the principle under which the expert is to function. Impartiality is not guaranteed by expertise. There is no essential correlation between objectivity in dealing with conflicting interests and special competence. As Senator Reed points out:

> Men become tariff experts because they are retained by particular interests to prosecute particular points of view; men become tariff experts because they are importers and have consequently to deal with the customs authorities and customs laws of the United States. . . . It is a matter of bread and butter that they should be experts in those laws. If we were to put in the law a provision that the tariff commission should be composed of disinterested tariff experts, it is probable that the membership would never be filled. The ideal person would be a disinterested expert; but no expert is disinterested.[15]

Of course there are many tariff experts who have studied the subject with no commercial interest at stake. Despite this obvious misstatement, Senator Reed stressed a significant factor. Any competent specialist develops a viewpoint with regard to his work and hence even the academician although free from economic motivation can scarcely be regarded as a totally disinterested expert. The Senator realized that absolute impartiality could not be assured by designating a board of experts. To be a student of tariff is to form judgments concerning the subject.

The Commission as originally conceived was to relieve Congress of the technical tasks that could better be handled by an expert body. But as a result of the new duties imposed upon the Commission by the flexible provisions in the 1922 act the conception as to what was required of a member received a new emphasis. So strong were the political and economic influences

[15] *Ibid.*, p. 1982.

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bearing upon the activities of this expert board that a judicial mind came to be regarded as a more significant qualification than technical competence. By 1930 the need of insuring the impartial character of this board was the consideration dominating the Senate debate over the nominees. Said Senator Robinson:

> The task of the Commission is a very great and difficult one. It ought to be composed only of men who are impartial and just. . . . The effort ought to be to secure the services of men who are unbiased and impartial in character and whose record discloses capacity and disposition to disregard extraneous influences and perform their duty within the letter and the spirit of the law.[16]

Senator Shortridge reflected the views of his colleagues when he expressed the desire for Commissioners firstly of "unimpeachable character, who cannot and will not be improperly influenced by anyone or any set of men," and secondly "of intelligence, who can listen, who can hear, who can take evidence" and logically reach a judgment.[17]

The Senate considered the nominees to the reorganized Commission in accordance with these concepts. There was the frank recognition that since the Tariff Commission operated in a context fraught with peril to objectivity, men should be appointed whose unquestioned integrity and disinterestedness would shield their activities from outside influences. Such characteristics were regarded as of more importance than special knowledge or understanding of tariff problems. This attitude was supported not only by those in the Senate but also by those who had direct experience upon the Commission. Commissioner Culbertson testified thus:

> My judgment is that the best commissioner in the long run is the trained impartial individual who when appointed knows nothing about the tariff at all. . . . After all, the Tariff Commission employs its experts, and what you want in a commissionership is not a so-called expert on the tariff, but you want a man

[16] *Ibid.*, p. 2050.

[17] *Ibid.*, p. 2053 *et seq.*

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> of broad appreciation and intelligent judgment and judicial attitude, who can take the facts that are furnished him by the experts and reach a sound decision thereon.[18]

Accordingly in drafting the act of 1930 special attention was given to securing a "higher type" of man to serve on the Commission. How could able men be attracted to the work as a career? The opinion was expressed that if the office of Tariff Commissioner were "dignified" all would be well. Prestige, such as that accorded the members of the Interstate Commerce Commission, was needed. The law already provided for a bi-partisan board with a six-year term and prohibited members from engaging in business while serving on the Commission. These clauses were reënacted and the only statutory change relating to personnel made in 1930 was to increase the salary from $7,500 to $11,000. From the debates in Congress and from the provisions of the new statute, the intention of drawing men of ability to the Commission clearly emerged. The choice of possible appointees was not restricted to those possessing certain technical qualifications. A broad view of the needs of the Commission was taken. Yet these legal provisions have not been of much significance in actual practice. A higher salary was not enough to tap a higher level of talent or training.

The President was authorized to select a new board. After canvassing various possibilities during the summer of 1930, President Hoover reappointed three members to the Commission and designated Henry P. Fletcher to head the Commission. The new chairman testified to a Senate committee that he had no views on the tariff prior to his appointment and that he had never read a book on the subject. Three of the new appointees after 1930 had served on the Commission at the lower salary and it is highly doubtful whether the labor leader, the former professor of rural economics and the ex-Congressmen since named to the new Commission would have refused service because of "financial sacrifice."

Nor can the members of the present Commission be regarded as possessing qualifications of impartiality or expertness that

[18] *Hearings, op. cit.* See testimony from p. 537.

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sharply distinguish them from past Commissions. Mr. J. Lee Coulter, once a professor of rural economics, has the confidence of the farmers of the Middle West. Mr. Ira Ornburn was placed upon the Commission on the insistence of the American Federation of Labor. His term expired in June 1933. He worked his way up from humble origins and under educational handicaps to a place of leadership in organized labor. He is a Mason, Moose, Elk and Baptist. Mr. Brossard, often referred to as the political protégé of Senator Smoot, was promoted from a subordinate staff position to a Commissionership. The beet-sugar planters of the Far West and the fruit growers of the Pacific area were enthusiastic in their demand for his reappointment.[19] The South has been lately represented by ex-Congressman Charles R. Crisp of Georgia, succeeded by ex-Congressman Collier of Mississippi, who served from March 1933 until his death last September. The present chairman is the former editor of the aggressively Republican *Boston Herald,* the vice-chairman is Thomas Walker Page of Virginia, well-known for his Democratic low-tariff views. Congress in reorganizing the Commission assumed that by paying higher salaries and thereby attracting " better men " impartiality could be attained and the judicial mind enthroned.

Despite the Senate investigation and the attempt on the part of Congress to attract men of talent and judicial temper no fundamental changes were brought about in 1930. "As regards the powers and duties of the Commission," Professor Taussig notes, " no changes of moment were made." [20] Yet the new Commission has functioned since 1930 without internal friction and without incurring any important criticism. How then can the present administration of the Tariff Commission be explained?

The Commissioners administer the law smoothly not because they are superior to their predecessors but rather because they

[19] *Congressional Record,* Jan. 13, 1931, p. 2051; see letters of indorsement read into the record from: Growers' Tariff League, California Almond Growers' Exchange, Poultry Producers of Central California, California Woolgrowers' Ass'n., California Cherry Growers' Ass'n., Calipatria Growers, Pacific Agricultural Foundation.

[20] Taussig, *op. cit.,* p. 525.

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understand their position. The essentially political context of the Commission has been made only too clear by the experience of the recent past. The Commissioners have adapted themselves to this environment and have been content to leave policy to political agencies.

If appointees are not in harmony with their bureaucratic environment friction appears. Either conditions are changed or the membership is altered. Until this happens the work of the administrative agency is disrupted. Resignations or removals must occur.

The present members appear detached from personal pecuniary interests in any of the activities of the Commission but they are identified with the viewpoints of various interests toward the tariff. This has come about without reference to formal statutory provisions or to the ideal qualifications for office as expressed in the Senate.

Qualifications for service on the present Commission appear to be determined in pragmatic fashion—in terms of the political and economic context of the Commission. The whole problem of qualification is of a relative nature. Qualification amounts to the possession of certain characteristics and equipment for the performance of a particular duty. If the Tariff Commission is merely a fact-finding agency in administering the flexible clause it should be representative of various viewpoints in the collection of these facts since the law can provide no definite scientific standard as to what must be included and what excluded. Different interpretations follow from the basis taken in determining the cost of production. The rule cannot be made hard and fast. The wide choice in the selection of factors determining costs makes it appear desirable that the farmer, the worker, the free-trader and the protectionist have their spokesmen. Since this formula permits of so much choice in the items to be considered in determining the cost basis, the Commission needs a membership representative of various viewpoints. Business men as well as agricultural economists and journalists have a place on the Commission. Differences of opinion could be expressed in minority reports without disruption to the Commission's work.

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If the cost-of-production formula were done away with and the Commission lacked all discretionary power, group interests would no longer see their welfare in terms of representation on the Commission. But if the Commission is supposed to decide what a schedule should be then its members must be free from political influence and economic pressure. Professor Beard predicted in 1930 that "pressures once brought to bear on Congress periodically will now be trained on the Commission without ceasing. And its recommendations whether approved by the President or not will doubtless be subjected to a constant discussion in Congress." [21] But this has not been the result.

The present Commission apparently takes a realistic view of its place in the political scheme of things. By not asserting powers which would involve it in matters of policy it finds shelter behind Congress and the President.

One of the responsibilities that disrupted the Commission in administering the flexible provision was selecting the commodities that were to be investigated with a view to altering the rate. Now the Commission is required to make investigations not only on its own initiative but also upon the request of the President or on the motion of either House of Congress. As a result the majority of investigations undertaken are those required by Senate resolution.[22] No matter how trivial the

[21] C. A. Beard, *American Leviathan*, p. 459.

[22] *Seventeenth Annual Report* of the Tariff Commission, p. 8: "During the 3 years of the existence of the Tariff Act of 1930, there have been instituted by the Tariff Commission, under section 336, the rate-adjustment section of this tariff law, often referred to as the 'flexible tariff' provision, 105 investigations. Sixty-one of these investigations were ordered on resolutions adopted by the Senate, 9 at the request of the President, and 35 on applications from interested parties. Fifty-seven rate-adjustment investigations have been completed, resulting in presidential proclamations decreasing 26 rates of duty and increasing 23. In other instances the President approved the Commission's reports which did not specify changes in duties. This action left 55 rates of duty unchanged, after investigation by the Tariff Commission under the rate-adjustment section. In the case of four items included in two of these investigations the President returned the Commission's reports for more current data." *Work of the United States Tariff Commission Since Its Reorganization, June 18, 1930 to March 15, 1932*, U. S. Doc. Miscellaneous Series, 1932, p. 9. P. W. Bidwell, "First Year of Flexible Tariff under the Reorganized Commission", *Annalist*, Sept. 11, 1931, p. 422.

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product, if Congress orders the investigation the Commission must comply. Special interests thus find it easier to approach some sympathetic Senator than to ask the Commissioners directly for attention.

The Commission of late has been less exhaustive in its investigations and more expeditious in its reports. Much less emphasis is placed upon finding manufacturing costs in foreign countries. By abbreviating and simplifying the search for items of cost the Commission has reduced its task and kept its work up to date. The Commission since its reorganization has functioned efficiently and has responded readily to Congress in pushing investigations through to completion. Upon its own initiative, the Commission has turned again to making surveys upon general subjects not relating directly to particular schedules.

While the power of Congress is great in dictating investigations, the influence of the President is exercised in the establishment of rates. Although the Chief Executive under the 1930 act is not empowered to fix schedules even within prescribed limits, he can reject the specific recommendations of the Commissioners and refer the report back for further consideration. The Commission as before can recommend tariff increases or decreases within a range of 50 per cent of the existing rate. But two authorities cannot exercise discretion upon the same subject without disagreement appearing; the subordination of one to the other is the only alternative. Critics have raised the cry that the Commission is unduly acquiescent to the President in failing to press certain of its recommendations for tariff reductions.[23] It can hardly be expected that the

[23] *Congressional Record*, Senate, July 7, 1932, p. 14771. Referring to hearings of June 1932 before the Finance Committee of the Senate concerning the nomination of Brossard, Senator Costigan stated that he questioned the latter "in some detail about the Tariff Commission's failure to complete investigations of cherries, preserved tomatoes, and dried beans, and the absorption of much time and expense on relatively minor investigations such as cost of production of ocean sponges, upholsterer's nails and sperm oil.

"It was disclosed that the tomato and cherry investigation resulted in 1931, in reports to the President favorable to lower duties; that the President thereupon returned the report to the Tariff Commission requesting it to make additional inquiries, and that nothing has been done by the Tariff Commission with

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President armed with his power of appointment and of "non-reappointment" will knuckle under to an administrative board. Frequent opposition on the part of the Commission would discredit it politically and perhaps undermine its rather dubious position. It may exercise its duties of adjusting inequitable or irksome schedules and of relieving minor irritations. It can collect useful information and study significant commercial trends. But no commissioners, however well trained and impartial, can take the tariff out of politics. It must first cease to be a political issue in the minds of the public. Then the commission might function within a social and economic context where scientific norms could be applied.

Under present conditions the tariff question is beyond the competence of any administrative agency. The tariff remains an instrument of national policy.[24] It is doubtful if there can be a blanket policy in regard to schedules. Particular shifts and changes will continue to be made to meet particular needs. Here is a question enmeshed in considerations of international affairs, of revenue policy, of national self-sufficiency, of the rivalries between classes and sections, of the conflict between political parties. Under such circumstances no formula devoid of value judgments can be devised for disposing of the problem. A principle is yet to be discovered that will clarify the duties of the Commission and enable it to interpret, automatically, the concrete in terms of the general. Different duties must be levied to attain the various ends sought, and no coherent set

these investigations in approximately a year and three months since the President, in April, 1931, so requested. It appeared further that the dried beans investigation, which Senator Vanderberg, of Michigan, is said to have initiated through a Senate resolution, was subsequently switched to a general inquiry under the commission's general powers. . . . We have here illustrations of external interference of the normal course of Tariff Commission investigation, not intended when the commission was created."

[24] This was unmistakably recognized when in the Revenue Act of 1934 (Public Law No. 216), approved May 10, the President was given the authority to negotiate special reciprocal tariff agreements and to raise or lower rates by executive order. (Professor John Day Larkin of the College of the City of New York has just completed an admirable study of "The President's Control of the Tariff", which clearly analyzes the significance of the chief executive's position.)

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of criteria is applicable. Unless a Commission can be fortified by such principles, given a clear purpose and left free from Congressional interference it cannot function without friction as a quasi-judicial administrative agency. The necessary qualification for a Commissioner today is a lively sense of his own limitations—the political context of the Tariff Commission being what it is.

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REVIEWS

Recent Political Thought. By FRANCIS W. COKER. New York and London, D. Appleton-Century Co., Inc., 1934.—ix, 574 pp. $4.00.

There is a curious dearth, both in English and in other languages, of books which deal at all adequately and comprehensively with the development of political thought in modern times. In English there is no effective work which does for the modern period what McIlwain, for example, does for the classical and medieval periods. What is greatly needed is an interpretation of the movements and schools of political thought, showing on the one hand their relation to the general thought-forms of the times and on the other their dependence on historical conditions and changes.

This, however, is not the task to which Professor Coker has set himself in this new volume of the Century Political Science Series. He has undertaken something else which, though much more limited in its scope, is also needed. His work is descriptive and explanatory, "a review of dominant political ideas, as set forth in theoretical writings and active social movements, during the period from the middle of the nineteenth century to the present day". It is, as the author states, a review or an exposition, and not, in any broad sense, a critique or a synthesis. As such, it serves its purpose admirably. It is catholic, fair-minded, accurate and in the best sense scholarly. And it realizes that the content of political thought is not to be found solely in the writings of the professed theorists of politics, but also in the contributions of economists, jurists, historians, psychologists and sociologists.

In reviewing the history of ideas it is not, of course, possible to assume a purely objective or expository attitude. At the outset the schools selected for review and the mere space devoted to each must depend on the significance attached to them by the author. On this ground the author exposes himself to criticism. The socialist schools are given due prominence, and half the volume is devoted to their tenets; but the other schools are lumped together under the rubrics "The Controversy over Democracy" and "Political Authority and

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Individual Liberty". The consequence is that certain distinctive and important movements of political thought are not given the definition and prominence which belongs to them. Thus the Hegelian-idealist movement appears under the heading "Philosophy of State Intervention", which is fairly relevant to Green but not at all relevant to Bosanquet and the neo-Hegelians generally. Again, the significance and the range of juristic interpretation of the state are obscured because it is all included rather summarily in a single short chapter entitled "Law and the State". Practically nothing, for example, is made of the important corporation-theory of Gierke and his successors.

In spite of these limitations Professor Coker's book can be thoroughly recommended. Nearly always his argument is careful and judicious. Rarely does he let fall an unguarded expression, though curiously enough one such occurs on the very first page where the statement is made that "in all regions to-day allegiance to the political organization of the community is normally *all-inclusive* and compulsive" (italics ours). In the reviewer's judgment there is no book available today which fills so well the need of students for a comprehensive review of modern political thought.

R. M. MACIVER

Stock Market Control. A summary of the research findings and the recommendations of the Security Markets Survey staff of the Twentieth Century Fund, Inc. New York, D. Appleton-Century Co., Inc., 1934.—xvi, 209 pp. $2.00.

In 1933 the Managers of the Twentieth Century Fund "foresaw the immense public demand for stock market regulation which the 1934 session of Congress would bring to a head. They also realized that there would be need for public enlightenment in direct proportion to the interest aroused. . . . They realized that an unbiased non-political and objective picture of the security markets and their practices would be welcomed by the public." Accordingly, the directors of the Fund undertook the study which is now published, and they gathered a staff of qualified men, directing them to undertake the necessary investigations and present a general analysis of market conditions and technique. This enterprise has been brought to a conclusion, and the result is the present volume, which, however, as the extracts from its preface indicate, is merely a summary of a considerably larger study as yet unpublished. The book "is in the

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nature of a preliminary digest of an immense amount of material—subsequently to be published in full . . . prepared by a corps of over thirty economists and assistants during the months of October, November, and December, 1933."

It is always difficult to appraise the value of an extensive piece of investigative work on the basis of a summary of its findings. Wide differences of opinion concerning both the theory and service of speculative exchanges inevitably exist, and the conclusions that are reached in a controversial field are always subject to some qualification pending the time when a full evaluation of the material gathered and the methods used permits a matured judgment. Still it is possible to form a general idea of what has been done by this group of investigators evidently working in a necessarily hurried, and sometimes fragmentary, way.

In general, the book accepts the thought that the work of our stock exchanges is not that of "gambling", nor even exclusively "speculation", but is the function of determining the market value of a vast body of paper representatives of ownership widely held by the public. The study estimates that more than 50 million people "are indirectly but none the less vitally interested" in the security market as insurance policy holders while the value of stocks and bonds held by individuals is probably fully $50,000,000,000. Nearly 40 million persons are interested as depositors in commercial and savings banks. "A majority of the population . . . has an interest in the security markets." In addition to these constant participations in security ownership, a very large number of people are of course affected through genuine speculative transactions.

In this situation, what is the purpose of the stock exchange? The study finds that such an exchange should give securities adequate marketability, appraise and reappraise their investment worth, and wisely direct the flow of savings. The object of "stock market control" should be to promote these ends. The Twentieth Century Fund finds that in order to accomplish them, it is desirable to have extensive Federal licensing of exchanges and markets, Federal incorporation of interstate concerns, establishment of minimum accounting and reporting standards, separation of brokerage commission business from the business of dealing in securities, control of margin buying and short-selling, and publication of facts about pool activity, as well as fresh and more detailed statistical data in various fields. These are all requirements that have been much discussed within recent months and need no more than a bare statement at this

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point. Incidentally, it is well to note that the bulk, though by no means all, of these recommendations, in one form or another, have been incorporated into the new stock exchange control act, or have been turned over to the commission which is to apply that act, to be used according to its judgment. This being the case, it may be hoped that the expected results of the reform may be realized. The results, according to the Twentieth Century Fund, would be to reduce mere speculation, protect the investor and bring about more confidence among legitimate savers in the use of their funds by those to whom they are committed.

On one point *Stock Market Control* is singularly and unfortunately reticent: it does not tell us how to obtain the services of a government or medium of "control" animated by the same ideas which have controlled the staff of the Twentieth Century Fund, nor does it indicate where that government can obtain a staff of its own that is capable of doing all the things that are now pointed out as desirable! Much less does it offer any means of guaranteeing the appointment of an adequate staff from among the best and most capable men available. In these circumstances security speculation is likely to run along very much as heretofore, except that the changes which have been introduced will make it more expensive and hence tend to make it more largely a rich man's pastime than heretofore, while the benefits of the innovations which are proposed will depend entirely upon the judgment and skill with which the new act is applied and the degree in which the community is willing to coöperate in its enforcement. How far these requisites can be obtained it now remains to be seen. The American public wants stock market control when others are "in the market"—not when it itself is disposed to "operate".

H. PARKER WILLIS

War Memoirs of David Lloyd George. Volumes I and II. Boston, Little, Brown and Company, 1933. — vii, 469, 449 pp. $4.00 each.

As Mr. Lloyd George himself indicates in his preface, nearly every prominent statesman or general connected with the war who survived long enough to do so has written or caused to be written his apologia. He might have added that the chief importance of these memoirs is the light they throw on their authors rather than on the events which they describe and that in their eagerness to write themselves up

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they more often than not succeed in writing themselves down! From Clemenceau to Ludendorff they show peevishness, jealousy, complacence over their own achievements and undue depreciation of others. Lloyd George comes out of the acid test of autobiography better than most. At least he is never dull or stupid, he has all the bounce and vivacity of Winston Churchill, he makes interesting every topic he touches and he has a chuckling wit that is delightful. But how he lowers his associates in the war to foothills to exalt himself as a mountain! How confident he is that he understood diplomacy better than the professional diplomats and could have directed military operations better than the generals! There are pages so naïvely self-satisfied that they deserve the title "The World War and How I Won It".

His special antipathy is the professional military man; Lloyd George is the champion of the amateur and the civilian against the narrow-minded "expert" and he fills two-thirds of his entire narrative with the blunders of Kitchener and Sir William Robertson and their French counterparts. His central thesis is:

> Two failures on key questions had completely transformed the military position to our disadvantage. The first was the failure to realise that this was a war of machinery, and the consequent neglect immediately to mobilise our national resources to improve the Allied equipment. The second was our failure until too late to appreciate the fact that the weakest point of the Central Powers was in the Eastern and Southeastern fronts. Thus a war of attrition was substituted for a war of intelligence (vol. II, p. 433).

On the first point it is now universally admitted that Lloyd George was right, and his work as organizer of munitions production is admired even by those who praise nothing else; on the second point there is at least a division of military opinion which would entitle him to his own view. Politically, no doubt, the military men were often nuisances. Both Kitchener and Robertson seem to have distrusted the French, and this handicapped hearty coöperation between the Allies; Kitchener also caused grave harm to recruiting in Ireland by sanctioning a banner marked with the Red Hand of Ulster while refusing to permit one marked with the Irish harp! It is interesting to note that but for trouble in Ireland Lloyd George would have sailed with Kitchener on his fatal voyage to Russia and no doubt have perished with him.

There is less of interest on diplomatic than on military matters. Lloyd George attempts no profound analysis of the causes of the war.

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He defends his Mansion House speech of 1911 as an attempt to warn Germany away from war; he opposed British entrance into the war if Belgium were not involved; he blames Grey for not having indicated to Germany at a much earlier stage of negotiations that the invasion of Belgium would automatically bring in Great Britain against her; he is of the opinion that Grey could have induced Bulgaria and Greece to join the Entente Allies early in the war. Grey "mistook correctitude for rectitude", was the "most insular of our statesmen" and "had no real understanding of foreigners"; "The ideal Foreign Secretary would be a cross between a recluse and a tramp, *e. g.* between Sir Edward Grey and Mr. Ramsay MacDonald" (vol. I, p. 89). He deplores the breakdown of the House negotiations for contingent American intervention in 1916 and thinks that "The real explanation probably is that President Wilson was afraid of public opinion in the U. S. A. and Sir Edward Grey was frightened of our Allies. The world was once more sacrificed to the timidity of statesmanship" (vol. II, p. 139). He gives not only the text of the Lansdowne memorandum on the need for an early peace, but also the less known private memoranda of Sir William Robertson and Lord Balfour on possible peace terms and the full text of his own statement on the military situation toward the end of 1916 (vol. II, pp. 288, 264, 300, 330). All these documents show an acute degree of depression and almost dismay at the military outlook in 1916. Yet Lloyd George is confident that no peace could possibly have been made before a military decision was reached, for so long as the Germans had hope they would have demanded impossible terms.

With respect to domestic politics, Lloyd George insists that he accepted with reluctance all three posts to which he was appointed during the war, the ministry of munitions, the ministry of war and the prime ministership. The first two posts involved unpleasant friction with the military authorities, and the third an open quarrel with Premier Asquith and his section of the Liberal Party. He publishes at length the correspondence between himself and Asquith to prove that if the latter had not changed his mind about the constitution of the War Committee of the Cabinet he might have remained prime minister to the end. Lloyd George tends to be censorious of his associates in the war and some of his nippy judgments are worth quoting. Asquith would have made a great judge, "But for the deluge, Noah was better adapted than Gamaliel would have been" (vol. II, p. 409); Balfour had the greatest personal

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charm and highest intelligence of any minister but "He saw both sides too clearly to be able to come readily to a clear conclusion. He gave the impression of a man who thought it really did not matter so much which of the two courses you took so long as you stuck to it afterwards" (vol. II, p. 416); Bonar Law attends the opera and declares "It would be quite tolerable if it were not for the singing"; J. M. Keynes "is an entertaining economist whose bright but shallow dissertations on finance and political economy, when not taken seriously, always provide a source of innocent merriment" (vol. II, p. 136); Kitchener—"the tropical sun had scorched and parched some of his intelligence, leaving merely oases of verdure" (vol. II, p. 194). On the whole of his war-time associates Lloyd George seems to admire Lord Haldane most, and he is bitter at the unjust attacks on Haldane's patriotism which forced him from the ministry. An interesting sidelight is that Dr. Weizmann's great chemical services during the war had much to do with converting the British government to Zionism (vol. II, pp. 48-51).

PRESTON SLOSSON

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British Colonial Government after the American Revolution: 1782-1820. By HELEN TAFT MANNING. New Haven, Yale University Press, 1933. — xii, 568 pp. $4.00.

The period which Mrs. Manning courageously chose for her study has been a dark age in the history of British colonial policy and administration. The important contributions to our knowledge of these subjects in the days of the old British Empire have been made by American historians, whose professional interest in the empire did not extend this side of the American Revolution. The colonial reform movement of the fourth and fifth decades of the nineteenth century and the coming of responsible colonial government have attracted the interest of a number of British and Canadian scholars. But for the intervening years historiography has on the whole reflected "the spirit of political lethargy" of which Mrs. Manning speaks as brooding over the colonies during the period of her study. Her book is to be judged, then, as a pioneer work, in which she has had little assistance from earlier historical writers. It is based principally upon documentary sources, the most important being the Colonial Office records in the Public Record Office. It is not obvious why 1820 was chosen as the *terminus ad quem* of the

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study; nothing of particular significance in imperial history occurred in that year. Mrs. Manning justifies her choice on the ground that, while 1815 would seem to be a more natural concluding date, it is impossible to estimate the permanent importance of the events of the Napoleonic wars "without considering how far they affected colonial administration after the Great Peace." Except in the last two chapters, however, she confines herself almost entirely to the years from 1782 to 1815, though the Quebec Act of 1774 receives attention on account of the influence of its basic principles on later British colonial administration.

Of the two parts into which the book is divided the first has to do with the colonial possessions of Great Britain which remained after 1782, "the fragments of an empire", as the author calls them, consisting of the old British West Indies and Bermuda, the West Indian islands ceded to Great Britain by France in 1763, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland, the territories of the Hudson's Bay Company and the province of Quebec. The government of these dependencies is described in chapters on colonial constitutions, colonial administration in England, the colonial governor, the colonial assemblies, the colonial courts, the civil establishments, the military establishments and the regulation of trade. With respect to these possessions there was little speculation in the realm of imperial theory or colonial government in the years following the American Revolution, and the essentials of the old colonial system were retained. Shelburne learned lessons from the revolt of the American colonies and had enlightened plans for imperial reorganization, but he was ahead of his time and was unable to accomplish anything of lasting importance along this line.

The British imperialism of the Napoleonic era finds its best illustration in the East. Mrs. Manning does not deal with British activities in India, but, as she says, "the Orient outside of India was full of new and fascinating possibilities to Britons." In the second part of her monograph, on "The New Empire", she describes British government in the conquered colonies in the East (the Cape, Ceylon and Mauritius) as well as in Canada and the conquered West Indian Islands. She calls attention to the similarity of the principles of the Quebec Act to those adopted by Great Britain with respect to the government of the colonies acquired by conquest during the Revolutionary and Napoleonic wars. The principle of the Quebec Act, namely, of "retaining the laws and institutions which had existed in a conquered colony under the former sovereign was ac-

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cepted almost as a matter of course by the ministers after 1793. They would not even admit, as had their predecessors, the inevitable superiority of the English criminal law, with its vaunted institution of grand and petty juries. In the new colonies the French or Dutch or Spanish codes remained almost intact." And, as in the case of the Quebec Act, provision was not made for the establishment in them of representative assemblies.

Mrs. Manning's research has been laborious and painstaking, and she has written a useful book on an important and much neglected subject.

ROBERT LIVINGSTON SCHUYLER

International Politics: An Introduction to the Western State System. By FREDERICK L. SCHUMAN. New York and London, McGraw-Hill Book Co., Inc., 1933.—xxi, 922 pp. $4.00.

Textbooks in the field of international relations divide into two classes. The first consists of those that emphasize or even deal exclusively with what is optimistically known as "International Government"—the study of the machinery of coöperation that has grown up gradually, especially at Geneva and The Hague, since the last war. The second class includes those works that analyze "basic factors" in international relations, generally placing more stress on forces making for war than on those making for peace. To the first type we turn for a cross-section of institutions, to the second for a study of the dynamics of world politics.

The work under review belongs to the latter class. In its 850 closely printed pages of text there is, to be sure, a good deal of descriptive material on the League of Nations, the International Labour Organisation and similar institutions. The whole of Book I (pp. 3-118) deals with the historical background of the Western state system, from the city-states and empires of the ancient Mediterranean to the colossi of our own day; while Book II (pp. 121-274), under the general heading "Forms", is devoted to the elements of public international law, the practice of diplomacy, the settlement of international disputes and public international organization. The treatment of such subjects is sometimes very good indeed, as in the chapter on international organization, but speaking generally these early chapters are the least impressive part of Professor Schuman's book. The preliminary outline of the evolution of the Western state system is too compressed to leave much impression

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on the reader. Only twenty-two of these pages deal with the period since Waterloo. Less than one page suffices for the rise of the Triple Alliance and the Triple Entente. It seems doubtful, also, if a very useful purpose is served by a single chapter, less than forty pages in length, on "The Elements of Public International Law" when the treatment is rather a summary of details than a presentation of principles or a consideration of the nature and proper function of international law in the state system. So, too, chapter vi ("The Settlement of International Disputes") is insufficient, and not adequately supplemented by later sections on the same topic.

It is only when he turns to "Forces" and "Prospects", the titles of Books III (pp. 276-533) and IV (pp. 536-854) respectively, that Professor Schuman strikes his stride. Here he deals first with nationalism, imperialism, the foreign policies of the major states and the "politics of power". From these topics he turns to survey certain economic problems of our day. He then discusses the place of war in society, gives a critique of the post-war search for peace and concludes with a glance toward the future of the Western state system.

In these chapters the reader will find a noteworthy interpretation of international relations. This interpretation is partly indicated indirectly, by the color of Professor Schuman's treatment of events and by his arrangement of his material. But its more important features are specifically expressed at appropriate points, especially in the chapter on "The Politics of Power." "All politics", the author remarks, "is a competitive struggle for power, but while power is sought in domestic politics as a means towards other ends, power is sought as an end in itself in international politics." It is this seeking for power that is the dominant factor in international affairs, that explains imperialism, armaments, war and other phenomena. The great difference between the competitive search for power in domestic politics, in so far as it is found there, and in the international field is that in the former the competing interests that seek power do so, short of revolution, "by pacific means through fixed legal and constitutional patterns of action". The solution of the problem of international peace requires a psychological revolution to produce a similar "constitutional consensus" among states. Professor Schuman does not regard such a happy consummation as impossible, but he has no very definite suggestions as to how it may come about and believes that the odds are against its occurrence. In the light of his analysis it would be naïve to conclude otherwise.

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It seems to the reviewer that Professor Schuman is not perfectly consistent in applying his main thesis. At times he tends to make the search for power the only motive in international politics, at other times the chief motive, and yet again to elevate other factors to equal rank in explaining the phenomena with which he has to deal (pp. 430, 593, 595, 600, 800). Moreover the logic of his argument as to the necessary weakness of arbitration (pp. 215-216) seems to limp; while the passage on pages 642-643 dealing with the renunciation of war is certainly confused.

Such faults serve to blunt the edge of Professor Schuman's argument. Nor is the reviewer satisfied that the realities of international relations can be pictured truly without a larger share of attention to the League and similar institutions than the author gives. Even if one concludes, as indeed the logic of events seems to indicate one must, that we have now passed from a post-war to a pre-war era, it may still be argued that the central fact of international politics since 1918, that which gives shape and distinction to this period as did the "Confederation of Europe" to the decade immediately after Vienna, has been the attempt to establish the collective system. But this is not the impression one would derive from reading Professor Schuman alone. None the less Professor Schuman seems to the reviewer to have produced what is by all odds the best single volume on general international relations. It is not only a handbook of facts, but also a philosophy of world politics.

THOMAS P. PEARDON

BARNARD COLLEGE

An Economic History of Soviet Russia. By LANCELOT LAWTON. New York, The Macmillan Company, 1932.—2 vols. ix, viii, 629 pp. $6.50.

In the sheer volume of its data on the subject, this history certainly outdoes every earlier work in the English language. It is all the more unfortunate, then, that one cannot say as much for the quality of the thought as for the quantity of the material. In the introductory sketch of pre-Revolutionary conditions, the author does fairly well by the land question (though he barely mentions the millions of peasants on the state lands, as distinguished from those on the private manors); but strangely enough, he has next to nothing to say about the laboring class and the labor movement, and he gives more space to the Nihilists than to the great revolution

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of 1905. Between 1917 and 1932, when the account terminates, the material is carved up, for the most part, into yearly chapters—a method which too often cuts crosswise through the vitals of the history; and the rarity of full and explicit citations of authorities is a shortcoming in a book that treats so many hotly controversial questions.

The handling of statistics is sometimes quite thoroughly incompetent, and here the most striking case in point is the treatment of profit and loss in socialized enterprise (pp. 337, 339, 399, 435, 499, 503, 511, 557, and elsewhere). The author says that year by year the state industries received from the government more money than they paid to it, and concludes that these industries were operated at a loss. Yet he admits that he does not know the amount of the net increase in the capital investment in these industries—and such being the case, he cannot possibly know whether this increase is greater or less than the net receipts of the industries from the government. In other words, he has not separated the current income account of the industries from their capital account, and his confused bookkeeping cannot properly lead him to any conclusion whatever regarding the profitability of these enterprises. Back of this technical question of accountancy there is, of course, the fundamental question whether the concepts of profit and loss have an ultimate importance in a socialized economy. If the products of the state industries were distributed gratis, and their entire cost recovered by taxation, the argument that the operation showed a bookkeeper's loss would hardly give the final answer as to the desirability of the system.

On the side of agriculture, the author makes the fundamental error of saying that after the Revolution, the average peasant's need for land became "greater than it was before" (p. 445); and elsewhere one finds many statements of a similar quality. Thus he says that after the Decembrist revolt, "the educated class was decimated by execution" (p. 11) (an absurd exaggeration); Russia was populated by "millions of mujiks who had no conception of law and order" (p. 74) (but what of the regulation of the most vital land-relations by the peasant commune, and the administration of justice, under peasant customary law, by peasant judges elected by peasant voters?); "great as was the damage caused by civil war, it did not exceed that wrought by socialization" (p. 127) (the one cannot by any possibility be separated from the other); under the New Economic Policy, "all survivors of the educated class were marked out

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for physical extermination" (p. 230); under the N. E. P., "no longer was every home a mortuary" (p. 274); the destruction of mechanical equipment was not completed during the Revolution because of the fact that the "wreckage of strongly-constructed machinery called for more intelligence than was possessed by the mob" (p. 310) (but in a great many cases the workers took over the plants intact, and did their best, not to destroy them, but to make them go); "the number of proletariat employed was 5 millions, of peasants hundreds of millions" (p. 311) (in a country with a total population of about 124 million); "the course of the revolution has been determined not by a few Bolshevik idealists, but by the half-nihilistic, half-barbaric spirit of the masses" (p. 610) (there is some truth in this, but it is hardly an adequate explanation of the measure of success attained in the building of a socialized economy).

There is a great deal of useful factual material in this book, though one does not exactly see how the general reader is to sort out the good from the bad; but it is in the failure to understand the vital energy of the new régime that the author is at his worst. Quite properly he gives a great deal of time to the discussion of errors, defeats and disasters—and certainly they have been numerous enough; but when the statistics compel him to report a signal success in this field or that, it seems hardly to occur to him that this too must have its explanation.

GEROID TANQUARY ROBINSON

Trade Associations and Industrial Control: A Critique of the N. R. A. By SIMON N. WHITNEY. New York, Central Book Company, 1934.—xi, 237 pp. $3.00.

Mr. Whitney has made an excellent study of the experience of a sample of eight trade associations that have recently sought to control competitive conditions in their industries. The partial and temporary nature of their achievements is, however, of little relevance to the analysis of the probable outcome of the National Industrial Recovery Act, as they were hampered by lack of power to enforce their policies and by legal limitations which have been removed by the Recovery Act.

In his attack upon the policy of the Administration in attempting to relieve the immediate business depression Mr. Whitney follows a very devious path. Administration avowals of intention to encourage

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industries to prevent overproduction are interpreted to mean that immediate restriction of output was adopted as one of the remedies for the depression, although there is little evidence that such was the original policy of the Administration: there is reason to believe that such a policy may have been indirectly forced upon the Administration by trade associations and Mr. Whitney properly points out that it leads to general impoverishment. He interprets the policy of increasing payrolls to stimulate spending as the acceptance of Hobson's theory that depressions are caused by oversaving due to an excessive inequality of incomes, although again the interpretation is quite unjustified. It is equally inaccurate to infer from this policy that the Administration denounces saving. The statistics cited to prove that the collapse of business was due neither to "overproduction" nor to undue inequality in the distribution of the national income are irrelevant.

In his discussion of the more ultimate consequences of the Recovery Act Mr. Whitney reveals the difficulties of almost all types of industrial organization. After a series of altogether inadequate analyses, he concludes that trusts and cartels tend to make prices more stable, but production less stable, than under competition; that the attempt by the government to fix fair prices for public utilities has revealed very great difficulties and inadequacies; that attempts by governments to maintain the prices of individual products have usually been unsuccessful, and that the history of planned economies affords little support for hopes of planning under the Recovery Act. He calls attention to many real dangers in the present policy under the act; the stabilization of individual prices may increase the instability of production; the prohibition of sales below cost may maintain prices above and production below a competitive level; control of output is likely also to maintain unduly high prices and preserve the less efficient; collective control of long-term investment cannot succeed because "there is no substitute for private judgment". He properly attributes to the increasing inflexibility of the economic organism part of the responsibility for the seriousness of the depression and holds that increased government control permitting an increase of monopoly, the regulation of prices and of wages, and the raising of tariffs, can only increase this inflexibility and still further reduce the probability of speedy self-adjustment. That the state should apply a completely integrated and thoroughgoing policy of control is "inconceivable".

Mr. Whitney suggests as an alternative to the Recovery Act the

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adjustment of the productive system to permit free competition. All prices and costs must be as speedily and easily adjustable and all persons as well informed and rational as they are assumed to be in the systems of economic logic based upon the assumption of "free competition". To meet the immediate depression the government should assist in the reduction of costs, the reduction of debts and tariffs, and relief from the liabilities of the Securities Act and the uncertainties of changing monetary policy. In the longer period it should eliminate monopolies, tariffs and valorization plans, publish statistics of prices and output, abolish unfair methods of competition, eliminate long-term bonds and contracts for raw materials (which render costs inflexible), and establish wages adjustable automatically with changes in the cost of living. With magnificant optimism the author hopes to prevent reckless investment by the publication of market information and the requirement that all firms borrow through the market (instead of reinvesting their own profits) in order that proposed investments may be subjected to the better judgment of investment bankers sharpened by desire for profit and care for their reputations. Mr. Whitney nowhere questions the possibility of making this adjustment; he nowhere considers the probability that the methods of production that we have adopted frequently conflict fundamentally with the requirements of free competition. He does admit that both competition and monopoly appear to be self-destructive and that "perhaps free competition is unattainable" but these admissions apparently do not impair his faith in his program.

Mr. Whitney gibes at those who have claimed that the possibilities of the act are worth exploration, contending that it is a strange philosophy of government that argues that each plan be tried until it has succeeded or failed. He claims that his conclusion that the act should be immediately suspended comes from appeal to logic and experience. His economic logic, however, derives from other and simpler worlds than the present, and of relevant experience there is little. His dismissal of the Recovery Act is based no more on logic and experience than is the whole-hearted support of it from other quarters. There is much that is undeniable in his statement of the difficulties and dangers of the new experiment in industrial control, but his conclusions rest largely upon an understatement of the difficulties of translating into actuality the free competitive systems of theory.

ARTHUR ROBERT BURNS

COLUMBIA UNIVERSITY

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Sir Edward Grey und das Foreign Office. By MARGRET BOVERI. Berlin-Grunewald, Dr. Walther Rothschild, 1933.—vii, 198 pp. Rm. 8.00.

This is a sober, judicious effort to determine, largely from the *British Documents,* "how far Sir Edward Grey was influenced in his conduct of English foreign relations by his colleagues, predecessors, or subordinates, and how far he acted independently."

Dr. Boveri concludes that neither King Edward, Campbell-Bannerman, Asquith, nor Parliament materially hampered Grey's freedom of action. King Edward's craving for power was allowed to express itself only within narrow limits; on questions of general policy he was closely watched and forced to act along predetermined lines. The relations between Campbell-Bannerman and Grey were not intimate, and their views on foreign policy were not harmonious; nevertheless the prime minister deferred to the foreign secretary and defended him in the Cabinet and in Parliament. Freedom and support were even more complete under Asquith, who was in thorough agreement with Grey's policy. Parliamentary opposition to Grey, while noisy, was ineffectual because it was largely confined to members of Grey's own party: Liberals were unwilling to jeopardize their own control over the government, particularly since a Conservative foreign secretary would certainly continue Grey's policies.

Grey met with determined and partially effective opposition, Dr. Boveri believes, only within the Cabinet. A majority of the ministers insisted that British freedom of action be maintained and that friendly relations with Germany be restored. They feared that Grey in his eagerness to preserve and strengthen the Entente was impairing British freedom and preventing a reconciliation with Germany. From the steady contest of wills which resulted, Grey emerged victorious, partly because he had the support of Liberal imperialists and Conservatives, partly because of his abilities as a tactician.

Dr. Boveri contends that the policy Grey defended was his only by adoption. When he took over the Foreign Office he liked the French and mistrusted the Germans, but he had formulated no policy. These prejudices made it easy for him to take over the Entente policy begun by Lansdowne and, under the skilful guidance of Sir Charles Hardinge, to carry this policy to completion. Hardinge alone of his subordinates exercised great influence over him. Crowe undoubtedly heightened his fear and dislike of Germany; Nicolson strengthened his determination to preserve the Entente, but neither

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was temperamentally fitted to take the place of the charming, tactful and wise Hardinge.

The analysis of Grey's personality and methods is possibly the most interesting part of the book. To Dr. Boveri, he was a man with no great interest in, or knowledge of, foreign countries. He accepted office only from a sense of duty. Throughout, he maintained an attitude of detachment, immune to praise and the joy of power. He was a true liberal in the freedom of thought and expression which he allowed his subordinates, a liberal also in his conviction that conflicts of divergent minds could be resolved by compromises embodying the best of each opinion. As a statesman, his strongest weapon was patience. He could be active when circumstances were favorable to action; but, more important, when circumstances were unfavorable he could wait, confident that a more propitious moment would come, or that time would bring its own solution.

This thoughtful book merits study by students of diplomatic history. Since it covers a large field, every reader will find much to quarrel with. The present reviewer, for instance, found the portrait of Grey much too subdued. Throughout, however, one is conscious that this is the work of a serious, dispassionate mind. The defence of, almost apology for, objective study in the preface is explained by the fact that this book was published in Germany in 1933.

R. J. SONTAG

PRINCETON UNIVERSITY

World Resources and Industries: A Functional Appraisal of the Availability of Agricultural and Industrial Resources. By ERICH W. ZIMMERMANN. New York and London, Harper & Brothers, 1933.—xix, 842 pp. $5.00.

The past few years have witnessed the appearance of a considerable number of works dealing with the all-important subject of world resources, agricultural and industrial. Students, manufacturers, merchants, officials, patriots, all have shown an eagerness to know what wealth the earth, indeed the universe, may have in store for human use. Thus far such interested persons have had to depend for information largely upon books which presented the relevant facts and figures and traced in a general way the part played by the more important resources in the development of society, but which failed definitely to *relate resources to man.* The significance of this lack

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becomes astonishingly clear when one ponders the words of Professor Zimmermann that "a man-less universe is void of resources; for resources are inseparable from man and his wants. They are the environment in the service of man. Usefulness to man, capacity to satisfy human wants, stamps environmental aspects as resources." The elaboration of this concept of resources and an analysis of the major resources from this standpoint are the chief contributions of Professor Zimmermann's splendid volume.

The spirit and approach of the book may be gathered from these sentences of the Foreword:

> Above all, we must learn to discard the static concept of resources as so many things, tons of coal, acres of land, units of installed engine capacity and to accept the new dynamic concept which interprets resources as functional reciprocals of changing want patterns, social objectives, and human arts—technological and institutional. . . . Resources viewed in that light are the living environment in the service of man. Energy rather than matter supplies the living force. Hence energy is placed in the center of the stage. It dominates the scene, determining the manner of land utilization, the size, shape, and architecture of the cultural superstructure which man raises on the foundations of his natural environment, vitally affecting even man's attitude toward population increase and hence the all-important man-land ratio.

The volume is divided into four parts. First, there is a study, called "Background and Perspectives", which involves a discussion of resources; factors of resource appraisal (such as human wants, social objectives and technological arts); energy and the implications of new energy uses; the land, cultural and machine environments; and the man-land ratio. The second part deals with agriculture, the use of agricultural resources, and the fate of agriculture under the impact of industrial development. The twelve chapters of this section provide, first, a survey of food resources in general, and then deal with the history, statistics, reserves, institutional values and futures of such specific resources as wheat, rice, sugar, oils, fibres, animals and trees.

Part Three is devoted to a consideration of the resources of industry and their utilization. There are thought-provoking chapters on coal, petroleum, water power, electricity, iron and steel, copper, precious metals, chemicals, and "resources from test tubes, waste heaps, and junk piles." Finally, the last portion of the book, under the heading of "Foreground and Prospectives", is concerned with the economy and conservation of resources and makes a strong,

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reasoned plea for world planning in the development and use of resources as the only real means of securing lasting peace. Only thus, believes the author, will there be derived the greatest advantages from the capitalist method of production, which "is superior to any other method previously tried", and from the availability of the machine, which, "as the means to dedicate natural energies to the service of man, is the greatest instrument of progress yet devised."

Scattered throughout the volume are 157 excellent and often ingenious charts, graphs and illustrations. The scope of this illustrative material is so broad as to include, for example, a picture of a 193,000-H. P. steam turbine, rice-field terraces in the Philippine Islands, cycles in cattle and sheep production, distribution of water-power resources, by-products of crude-oil refining, comparative costs of electrical energy, pipe lines in the United States, and a fine chart entitled "What becomes of the cotton crop." The bibliography, arranged to match the chapters, contains some 275 items. The index is satisfactory, and in general appearance and type the volume fully deserves to be labeled "handsome."

Unusual and novel in its method of studying world resources, Professor Zimmermann's work stands out as a pioneer effort in the field of cultural economics. It is, perhaps, not too much to say that no one may regard himself as well-informed in the spheres of economics, geography or history unless he become acquainted with this epoch-making study.

WALTER CONSUELO LANGSAM

COLUMBIA UNIVERSITY

Die neuen deutschen Konkordate und Kirchenverträge. By ALBERT M. KOENIGER. Bonn and Cologne, Ludwig Röhrscheid Verlag, 1932.—263 pp. Rm. 9.50.

Die Konkordate. Ihre Geschichte, ihre Rechtsnatur und ihr Abschluss nach der Reichsverfassung vom 11. August 1919. By ERWIN LANGE-RONNEBERG. Paderborn, Verlag Ferdinand Schöningh, 1929.—273 pp. Rm. 10.80.

The book of Dr. Koeniger, professor of canon law and the history of canon law at the University of Bonn, is both a source book and a commentary. It contains the official texts, in German, Italian and Latin, respectively, of the concordats between the Holy See and Bavaria (1924) and Prussia (1929) (apparently the concordat with Baden of 1932 was concluded after the publication of this book),

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of the corresponding agreements between these states and various Protestant churches (sometimes called in Germany "Evangelical Concordats"), and a number of church and state documents pertaining to both. The Commentary (118 pp.) is ample, detailed, and both carefully and profusely documented; it contains also an extended bibliography. Numerous cross-references provide an unsatisfactory substitute for an index. This scholarly book is of great importance to students of concordats and the subjects with which they deal, i. e. mainly the so-called *res mixtae* in the border region of spiritual and temporal power, such as schools and marriage. Students of German and comparative politics will also find much of value and interest in it as the problem of the relationship between Church (both Catholic and Protestant) and State has exercised a deep influence on German political life. Koeniger's book contains a great deal of factual and explanatory material—scattered, however, here and there in the Commentary — which contributes toward an understanding of the more complicated phases of the important Church-State relationship in Germany.

Dr. Lange-Ronneberg, a young Catholic jurist, has set for his book a wider aim. After dealing briefly with the origin and various definitions of the term concordat, the forms it may take, and its subject matter, he reviews the history of concordats (36 pp.) and then discusses at length their legal character (97 pp.) and related questions, pertaining mainly to German national and state constitutional law (127 pp.). His historical study, clear, concise and, on the whole, objective, begins with the Concordat of Worms (1122). Enough evidence is adduced to show that a concordat has often turned out to be a source of discord: also that, contrary to common expectation, concordats with Catholic states or rulers have not always been the most satisfactory ones from the point of view of the Roman Catholic Church, either in their provisions or their results. The author is especially interested, however, in the legal aspects of concordats. He discusses the various theories concerning their legal character carefully and at length; he accepts as the correct one (rightly, in the opinion of the reviewer) that which designates concordats as "conventions of a quasi international legal character" (pp. 125, 134), concluded between the Pope as the head of the Roman Catholic Church (and not as territorial ruler) and a state, and subject to the rules of international law (e. g., *pacta sunt servanda* and *rebus sic stantibus*). His treatment of the question is exhaustive as far as European continental literature is concerned,

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and stimulating; one of its values lies in the fact that Lange-Ronneberg is fully conversant not only with international and German municipal law but also with the canon law. In his discussion of constitutional questions the author shows why, under their respective constitutions, the pre-war German Empire was not, and the consequent German Republic as well as the various *Länder* were, able to conclude concordats. This part of the book is no longer of present interest but retains a historical value. The book is amply documented and contains numerous quotations from not easily accessible books (some in medieval Latin for which a translation might have been provided). The bibliography is good though limited to works in continental languages. An index is lacking. The author is given to a good deal of argumentation most of which appears sound and much of which is valuable. All of it is lively.

JOHN BROWN MASON

UNIVERSITY OF COLORADO

China's Geographic Foundations. By GEORGE BABCOCK CRESSEY. New York and London, McGraw-Hill Book Company, Inc., 1934.—xvii, 436 pp. $4.00.

The re-awakened interest in China in the last few years has resulted in the production of a great deal of ephemeral and often misleading writing. But it also has led to the publication of a number of books which, embodying the results of careful new studies, are permanently valuable contributions to knowledge about and understanding of the country, its resources, its social structure, its history and its culture. Among these latter is Dr. Cressey's new volume.

The book brings together in well arranged and interestingly told form exactly the kind of information about the geography, soil, climate and resources of China which is necessary to an understanding of the part which these basic factors have played and are playing in the development of the country internally and internationally. In preparing the study, Dr. Cressey spent more than ten years in research and travel, including journeys into the various parts of China totaling over 30,000 miles. The results of that careful preparation make the book the authoritative up-to-date work in its field.

In his first chapter, Dr. Cressey makes amply clear the significance and importance of China's geographical location and structure in determining the course of her development. "Within the sheltered pocket of Southeastern Asia, with all of its advantages of soil and

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climate, it is appropriate that a distinctive culture should have arisen", as he says (p. 6). He also points out, correctly, that "one of the most significant geographic facts in China's modern history is her new relation to the ocean. Formerly China faced to the north and west, and the Pacific was the back door. . . . Today all this has changed. China has turned about face and now fronts on the Pacific" (p. 7).

Nevertheless, now as in the past, "Topography Sets the Stage", as he shows in his second chapter which deals with this subject. In the succeeding introductory chapters, he covers other general subjects before starting on the specifically geographic material: "Climate, the Key to Human Activities", "Farmers of Forty Centuries", "Nature's Gifts to China", "China's World Contacts". This general material forms about one-third of the book. In the course of it, he calls attention to the fact, much too often overlooked in discussions of China's population, trade, communications and politics, that "mountains dominate the land forms of China. Level land is present in various deltas and in Mongolia, but elsewhere human activities are restricted by unfavorable topography, so that large areas are sparsely populated" (p. 37). His charts and tables, as well as the text, indicate clearly the significance of this fact and its bearing on population distribution and congestion, the movement of trade and similar matters.

The concluding two-thirds of the book are devoted to a careful description of the fifteen geographical divisions of China: the North China Plain, the Loess Highlands, the Mountains of Shantung, Liaotung and Jehol, the Manchurian Plain, the Mountains of Eastern Manchuria, the Khingan Mountains, the Central Asiatic Steppes and Deserts, the Central Mountain Belt, the Yangtze Plain, the Red Basin of Szechwan, the South Yangtze Hills, the Southeastern Coast, the Hills of Liangkwang, the Southwestern Tableland, the Tibetan Borderland. Climate, soil, geology, population distribution, agricultural and other products—such subjects are dealt with adequately, with enough but not too many statistical tables and graphs. This is the part of the book which particularly justifies the title. In this part, Dr. Cressey provides what everyone interested in China has wanted: a clear, comprehensive and yet comprehensible description of the land and the people's relation to it.

GROVER CLARK

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Current Monetary Issues. By LEO PASVOLSKY. Washington, The Brookings Institution, 1933.—xiii, 192 pp. $1.50.

Mr. Pasvolsky's book is a cursory survey of a number of the topics of monetary discussion that have been much in the public eye of recent years. The director of the Brookings Institution, which issues the volume, remarks that its Institute of Economics has undertaken to review several of the profoundly important measures bearing upon the monetary banking and fiscal future of the country and that the present volume is the first result of such studies. "After showing the divergence of opinion between the various groups and nations participating in international discussions and negotiations during the course of the year, it sets forth the trend of monetary development in the United States." It makes no effort to pass upon the whole range of issues or to suggest any specific program, but it does undertake to point out the relationship of present monetary policy to economic recovery. At the close of the text are given some useful appendices reprinting significant documents such as the statements issued by the various governments in connection with the London Economic Conference, President Roosevelt's radio address announcing the gold-buying policy, and various others. The volume is an extremely useful handbook of current monetary analysis.

So much has taken place during the past twelve months or more, and so rich is the material to be covered in any book on the subject that a short treatment of this sort must necessarily confine itself very largely to outlining facts. The volume thus possesses a certain journalistic quality in the better sense of that word, and will be of most service for those who need a convenient handbook from which to refresh their memories concerning recent or contemporary events. In fact, the book, not only in its Introduction, but also at various places throughout the treatment, disclaims any intention to discuss doctrinal points. Thus, for example, it expressly states that "it is outside the scope of this survey to discuss the possibility of raising prices through monetary action on an international rather than on a national scale"; but in spite of such disclaimers, the material is so arranged as to enable the reader to draw very obvious conclusions from the facts. One such, for example, has to do with the gold-purchase plan. As a result of the examination of that plan, the study publishes a useful price chart indicating that the disparity of prices as between different commodities has been greater since the advent of the gold-purchase experiment than before it.

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"Analysis", says the author, "leads to two primary conclusions: the first that no definite predictable rise in the commodity price level can be assumed to follow a given depreciation of the currency . . . the second, that once a desired price level had been obtained by whatever means, no evidence exists that thenceforth, that level can be automatically controlled by altering the price of gold." An analysis of the experience in a number of countries shows that any such result is out of the question. The volume concludes with a brief discussion which places emphasis upon the fact that the present unstable monetary situation is incompatible with the recovery of prosperity. The responsibility for this state of affairs is placed definitely upon the United States and leads to a call for "restoration of monetary policies"—a process in which it is naturally concluded that Great Britain and the United States must join.

Mr. Pasvolsky's work is likely to be informative and beneficial, being simply stated and popularly written. It deserves a wide circulation.

H. PARKER WILLIS

Unemployment Funds, A Survey and Proposal. By HUGH H. WOLFENDEN. Toronto, The Macmillan Company of Canada, Ltd., 1934.—xvii, 229 pp. $2.00.

Protection for the unemployed is unquestionably one of the most urgent problems before the American public today. The general feeling is that although we have no cure for the wide fluctuations in the business cycle, we do have practical devices whereby a portion of the income from prosperous days may be safely set aside to provide for the needy in times of unemployment. It is the purpose of this interesting volume to distinguish and characterize the different means whereby this unemployment protection may be secured.

The author discusses the nature of and the distinction between insurance, savings, compensation, relief and reserve plans. Insurance implies the coöperative association of a large number of persons for the purpose of sharing among themselves the burdens resulting from a given contingency, such as sickness, death or unemployment. In savings plans the contributor receives back the precise equivalent of his contributions with interest earned after deducting expenses. Compensation plans provide for payments to the beneficiary without any prior contributions on his part, while relief is charitable assistance for which the recipient has made no prior payments in cash or

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labor. The reserve plans are closely akin to savings whereby the employer sets aside money in his own fund, or with others in a pooled fund, for the benefit of the workers in times of unemployment.

The various existing and proposed plans for unemployment funds are next considered, first in Europe, then in the United States and Canada. Each plan is concisely outlined. Regarding plans in the United States, one finds a sketch of the Wisconsin law, the proposals of the American Association for Labor Legislation, the American Federation of Labor, and many suggested state schemes; likewise mention is made of the various company plans proposed or in operation.

The volume contains a very candid treatment of the philosophy of measures for unemployment protection, which is followed by a detailed statement of the basic principles necessary for the successful operation of unemployment funds. Particular attention is given to the classification of those persons to be included in or excluded from benefits. The author then presents his own suggestions for a comprehensive plan of "employee savings" funds.

Mr. Wolfenden's scheme, in brief, would be based upon the principle of equal contributions from employer and employees for the maintenance of benefit funds. Administration of the funds would be through a board representing employers and employees jointly. In addition, he suggests requiring employees to contribute to their own thrift or savings plans, probably with state assistance, which would be drawn upon only after exhaustion of the limited benefits derivable from the joint plan. Not until the thrift account had been used would the unemployed person be required to appeal for state relief, which would be granted subject to a means or need test. The employer would be encouraged to assist his employees by matching their contributions to the thrift account, the fund of last resort, within certain prescribed limits.

A further savings fund, maintained solely by the employee's own contributions, might be required, with the possibility of the state's matching these contributions; this fund would be used for premiums for insurance against sickness, disability, old age or death; if no insurance of this nature is carried, the fund itself could be drawn upon for such contingencies. Thus, Mr. Wolfenden's proposal requires the employer, the employee and the state to contribute, but they do so in three different ways, to three separate and yet related funds. This system, he thinks, would have the effect of encouraging the employer, the employee, state officials and the taxpayers to work

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in harmony and sympathy without the selfish maneuvers which so frequently endanger unemployment protection plans.

This little volume is valuable not only for the unique proposal offered by the author, but also as a handbook for reference to a multitude of other plans in practice at the present time, or merely proposed.

EARL E. MUNTZ

NEW YORK UNIVERSITY

Communications in the Far East. By FREDERICK VINCENT DE FELLNER. London, P. S. King & Son, Ltd., 1934.—vii, 362 pp. 15s.

This book emphasizes the importance of an actual first-hand acquaintance with the people and their economic problems before interpretation of statistical or descriptive material on so technical a subject is undertaken. The author jumps at a number of conclusions which are obviously faulty because certain necessary links in the chain of his reasoning are missing. These links can be generally classified as those representing the human equation. On page 98 he gravely informs us that "One of the reasons of the importance of Manchuria for Japan consists, accordingly, in the fact that it represents a territory on which Japan is able to throw her excess population. . . ." Had he visited the actual scene he would have realized that, aside from a relatively small number of railway officials and merchants, Manchuria can never absorb anything like the million people a year by which Japan's population is increasing because the Chinese are already on the soil and are able to underbid the Japanese. Thus aside from any consideration of the rigorous climate, which the Japanese abhor, it is economically impossible for them to settle in any great numbers in Manchuria. On this fatal error he has based an important conclusion that Manchuria is the only possible region for Japanese expansion.

Another lapse of the same character is noticeable when he observes on page 118 that "The main obstacle to the prosperity of the Chinese railways is their extraordinary degree of indebtedness, owing to which a large part of receipts is spent on interest service. . . ." As holders of Chinese railroad bonds know to their sorrow such facts may be deduced from the elaborate statements prepared by the Chinese Department of Communications, but as a matter of fact the receipts of many of the railroads are appropriated by the War

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Lords before they ever reach a central authority to be paid over to the bondholders. This leads him to place the responsibility for the neglected condition of the permanent way, superstructure and rolling stock not upon the speculation and ofttimes downright robbery of the irresponsible soldiery, but upon the poor bondholder who is often just as neglected as the right of way.

Aside from these major defects, the book is a careful compilation of facts about the railroads, the roads, the inland, coastal and maritime shipping, the posts and telegraphs and the canals of China and Japan. There are interesting chapters on motoring and aerial transport, which phases one wishes had received more lengthy treatment. As a reference book containing a wide variety of statistical data on these subjects, carefully compiled and attractively presented, the volume is to be highly recommended. The chapters on "Japanese Maritime Shipping" and "Inland River Navigation in Far East" show careful research and admirable compilation.

With the basic, theoretical and statistical knowledge he has acquired from this study, several years of residence in China will, perhaps, lead the author to base fewer conclusions on the happy prognostication that after the civil wars in China are over working receipts on the Chinese railroads will increase and it will be possible to allot larger amounts to the interest service. Only a few weeks' actual residence in China would, no doubt, convince him that the only interest many of the War Lords, through whose bailiwicks many of the railroads run, know anything about is self-interest, and that he who controlleth a railroad ticket-office is often greater than he who taketh a city. The bondholders will be fortunate, indeed, if after the civil wars are over in China there are any railroads left.

F. R. ELDRIDGE

NEW YORK UNIVERSITY

Juristische Person und Staatsperson. By HANS J. WOLFF. Berlin, Carl Heymanns Verlag, 1933.—xv, 516 pp. Rm. 26.

German philosophers have coined words and invented phrases to bridge the gap between the *Sein* and the *Sollen*. Very few have understood that this gap is unbridgeable; that *Sein* and *Sollen* are like the sides of a medallion, only one of which may be seen at a given time. Being not difficult of demonstration, it is a favorite trick of the German critic to observe of philosophic systems that they

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either hang in metaphysical space or are fastened in the physical world. This work is no exception.

Dr. Wolff presents a keen study of the most impressive systems of legal and political philosophy which have appeared on the Continent in recent times. There is a particular emphasis on German and French theories. A critical analysis evidences a fine understanding of the underlying philosophical principles. In this work the concepts of legal person and state person are thrown against a background of these underlying principles.

The distinction in German between *Person* and *Mensch* lends clarity to the study of the content which the concept of legal person should possess. In a regular procession one theory after another is examined to discover the content given to this concept and the conclusion of one theory after another is discarded. In the end the concept of legal person is defined as "a legally technical point to which rules of positive law may be imputed". This conclusion is not startling, neither is it original. Kelsen and others have expressed the same idea. It forms the basis for no new theory and remains but an analytically correct conclusion.

For many years the German philosophers have confused the concepts of state and government. Carl Schmitt mixed up his terminology but he arrived at the correct conclusion, and Carl Schmitt is an exception. It now appears that another concept—that of *Staatsperson*—is to be introduced to add to the already existing confusion. *Staatsperson* is defined as a "constructively perceptible imputation-subject founded in international law on the one side and the general legal order on the other". What this means is that the legal order of the state is capable of being so conceived that the state itself may be regarded as a legal person from the point of view of international law, and rights and duties may be imputed to it as such. All of the recent theories in respect of this concept are again paraded for the benefit of the reader. The conclusions are so obvious that one wonders if so many pages are really required to arrive at them. Again it may be said that Kelsen has already presented all of the possibilities for the development of theories from this concept; and Kelsen's work, in comparison, has a refreshing originality.

The last part of this book—its most important—should have come first. In this part Dr. Wolff has gathered together a list of the most important terms used in legal philosophy and has given excellent definitions for them.

This is not an original work, but a review and critical analysis

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of practically all of the recent German and French theories of law and state. It should prove especially helpful to the uninitiated. As this is the first of a five-volume series contemplated to cover the entire field of law and state, it is hoped that Dr. Wolff will hereafter direct his endeavors in more original paths.

T. C. CLARK

NEW YORK CITY

Statistical Procedure of Public Employment Offices. By ANNABEL M. STEWART and BRYCE M. STEWART. New York, Russell Sage Foundation, 1933.—327 pp. $2.50.

It is hardly possible to overstress the importance to the employment office of proper statistical procedure in its task of bringing the worker and the job together. As Miss Van Kleeck points out in a foreword, records are not only important in facilitating placements but also "have a broader significance as a measure of the ratio of demand to supply in the so-called 'labor market'." Providing that offices keep comparable records and that terms and classifications are uniform: "A state or a nation with a well-administered employment service can be kept currently informed of fluctuations in employment and unemployment in different occupations and in the various regions where offices are located." It should be added, however, that an accurate measure of the ratio of demand to supply and adequate data on employment cannot be had from such records unless employers patronize public employment offices exclusively or unless private employment offices are required to set up adequate record systems and to make prompt reports to a centralized clearing house. Furthermore, an adequate knowledge of employment necessitates a knowledge of separations from payrolls, for we cannot know from employment office records alone when employment is on the decline and to what extent. Current and useful data of unemployment are predicated first upon adequate employment data and second upon the condition that workers register exclusively at public employment offices or, again, that private employment offices coöperate in record-keeping and reporting.

This volume is limited to a consideration of the statistical procedure of *public* employment offices and a sufficiently stupendous task it was, since it involved a consideration of five European countries, of Canada, and of the United States with its varying procedures in different states. Public employment offices are not by any means the only placement agencies in operation, although as the authors point

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out "the business of conducting a commercial agency is regulated in most countries and entirely prohibited in a few." There is little room for doubt, especially in the United States, that the public employment office will play an increasingly important rôle in bringing workers and jobs together. At the present time there are in the United States commercial agencies operated for profit and controlled in varying degrees by the several states, employment offices maintained by unions, offices operated by employers, by fraternal and professional groups, by schools and colleges as an adjunct to their educational activities (and by some schools as a "bait" to attract students to their training courses), and virtual employment exchanges by all newspapers publishing "help wanted" and "situation wanted" advertisements. In addition to these more or less formal employment exchanges the great bulk of employment has been, and will continue to be for some time, "at the gate" and in certain trades employment is largely through the business agents of the unions. The situation is further complicated in the United States by the fact that, according to the authors, "the country had in 1932 state services in 24 states and a system, partly supplementary and partly competitive, operated by the federal government." While it must be obvious that the situation is somewhat chaotic, the painstaking work of the Stewarts in examining public employment office statistical procedure and in suggesting a plan for United States public employment offices lays the foundation for proper records and reports when unification or coördination of employment offices does come.

The general statistical procedure of employment offices is examined in Part I and brief reference is made to the various countries studied. In Part II each country and various states of the United States are considered in more detail. Each sketch considers (1) the development and organization of the public employment service, (2) the procedure and resulting statistical reports of the employment exchanges with reference to openings, applications, referrals, placements, clearance and occupational classification, and (3) the publication of statistics.

The plan for the United States is really something more than a mere idea, for its more important recommendations have been tried out in Minneapolis, St. Paul, Duluth, Rochester and Philadelphia. It is suggested as being equally applicable to public and to industrial exchanges and it gives due consideration to the probable nationalization of the public employment service. Bearing in mind the dif-

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ferent procedures observed in the various countries studied, the authors have patterned their plan somewhat after that in use in Canada. In order to assure standard statistical procedure among the many state offices it is urged that the statistical function be centralized in the Federal government, or, if national centralization cannot be had, then centralized within each state. Basic information in the form of a daily statement of transactions of each office is to be sent to a central statistical bureau, which will be able to analyze the data more adequately than is now done in the local offices. The argument for centralization is a strong one since: "Either national or state centralization of the employment office statistical work would relieve the local offices of statistical duties so far as possible and permit them to concentrate on their primary function of placement." From the daily records of the local offices the central bureau would compile data of openings and applications available at the beginning of the day, disposed of during the day, and on hand at the end of the day. Each local office would receive periodic statements of its operations and from time to time an inspector may check such figures against the files of the local offices. The plan is, of course, described in some detail and a suggested daily report form for local offices is included. Recommendations are made as to what data should be tabulated for administrative and other purposes and as to the publication of weekly, monthly and annual figures.

It is pointed out that centralization implies uniformity of classification and of definitions of terms. As to duration of employment, for example, it is suggested that *regular* employment be that "promising to continue longer than a full working week", while *temporary* employment be that of shorter duration. The difficulty of classifying applicants as to industry and occupation is discussed and the census classification of industries is suggested as a standard.

FREDERICK E. CROXTON

COLUMBIA UNIVERSITY

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BOOK NOTES

Our Next Step (New York, Harper & Brothers, 1934; x, 199 pp. $2.00), by Matthew Woll and William English Walling, is an attempt to present the point of view of organized labor in America. Although it is in no way an official pronouncement of the American Federation of Labor, a foreword by William Green indicates that he, at least, is in hearty accord with the program here presented. The point of view is in no way revolutionary. The continuance of the capitalistic system is at all times postulated. The fundamental problem, as Messrs. Woll and Walling see it, is the attainment of an equilibrium between the income of the consuming and investing classes of such a character as to start the wheels of industry going and keep them turning. This, in the opinion of the authors, means a radical increase in the income of the lower classes, and a consequent curtailment of income for those on the upper income levels. That such a diminution of income will be accepted by the upper classes without protest seems very unlikely. It is for this reason consequently that the authors of this monograph believe that not only will the government have to assert itself as the senior partner in the partnership now existing between government and industry, but that the firm will have to be reorganized so as to include labor as one of the partners. Only thus will it be possible for the senior partner, subject to pressure from both sides, to maintain an unbiased point of view, and to dominate the partnership in the interests of the whole rather than in the interest of a fraction thereof. In so far as the Roosevelt program has kept moving in the direction of this, their desideratum, Messrs. Woll and Walling give it full support. But that it is still a long way from the consummation of their ideal they indicate both clearly and specifically. Although one may, perhaps, wonder just where the authors obtained this figure or that with which they buttress their argument, one is forced to conclude that there is contained within the covers of this monograph as interesting a statement of labor's objectives as has appeared in many a day.—SCHUYLER C. WALLACE, Columbia University.

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Trade Associations, by W. J. Donald (New York and London, McGraw-Hill Book Company, Inc., 1933; xiv, 437 pp. $4.00), is primarily concerned with the internal organization of trade associations. Mr. Donald writes clearly and in great detail concerning the preliminary organization of such associations, the proper scope of their membership, the appointment and functions of directors, officers, committees, executive officers and staffs, and the organization of conventions. His description of the main functions performed by trade associations is incidental to the main purpose of the book and is, for that reason, perfunctory, although not uncritical. Mr. Donald is conscious of the dangers of the usual preference of trade associations for policies calculated to raise or maintain prices rather than to reduce costs. He doubts the wisdom of present attempts, facilitated by the National Industrial Recovery Act, to prevent increases in productive capacity. He expects open price plans and the circulation of statistics of output to increase the stability of prices, but the scope of his approach precludes any discussion of the desirability of such greater stability or any far-reaching analysis of the consequences of trade association policies in general. In view of the great emphasis placed upon the trade association as a means of industrial control under the National Industrial Recovery Act, Mr. Donald's clear and exhaustive consideration of the technique of organizing and managing such associations will doubtless be of great value. It is to be hoped that his critical attitude to some of the major policies of trade associations may, because of its origin, induce associations to take a longer and wider view of the consequences of their policies than most of them at present entertain.—ARTHUR ROBERT BURNS, Columbia University.

A thoroughly satisfactory review of the public utility problem, particularly as it relates to the electric power industry, is contained in the small volume by a former chairman of the Public Service Commission of New York—*Public Utilities and the People* (New York and London, D. Appleton-Century Company, 1933; vii, 379 pp. $3.00) by William A. Prendergast. Long experience and first-hand contact with the issues discussed reveal themselves in a readiness to examine all sides of a controverted question, and in a definiteness and clearness of opinion when a solution is demanded. One may not agree with the author's views, but one cannot dismiss them lightly. All the issues that have become the subject of popular discussion are here treated with varying degrees of thoroughness. The principal topics are holding companies, valuation and the rate of return, rate problems including the controversy over domestic rates

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and their relative burden, the success of regulation, and the agitation for government ownership. To meet the holding company problem, it is suggested that state regulation be supplemented by giving powers to an existing federal commission, and thereby effecting coöperation between state and federal governments. Reproduction cost as a basis of valuation is favored, rather than prudent investment, largely because of the effect of the changing value of money. The author contends that he is following Supreme Court interpretation in insisting that the dominant element in "present value" is cost of reproduction. But he gives insufficient consideration to the highly speculative consequences of the practical applications of the theory. He urges greater use of promotional rates, and sees in their extension the solution of the domestic rate problem. He is fundamentally opposed to the entrance of government into industry. While recognizing that the Ontario Hydro is "the best managed and operated government enterprise in the world", he does not feel that this proves that such a project should be government owned and operated. By far the most informing portion of the book is that which is drawn directly from the author's personal experience as commissioner, and consists of his vigorous defence of regulation against the charge that it has "broken down". While recognizing that greater legislative support is necessary if thoroughly satisfactory results are to be attained, and that appeals of utilities to the federal courts in a few cases of large importance have created the impression of inefficiency, yet he insists that the various obstacles that commissions have encountered are in the nature of growing pains, and can be corrected with judicious treatment. The general conclusion made by the author, after a review of all the criticisms, is that "regulation of utilities by state commissions is a new and surprisingly effective contribution to government." — FRANK HAIGH DIXON, Princeton University.

The Federal Debt, 1919-1930, by Henry George Hendricks (published by the author, Washington, 1933; 333, 15 pp. $6.00), is an able account of the management of the federal debts and credits which grew out of the war. The book starts with an analysis of the balance sheet of the federal government at the close of the war. It goes on to relate in some detail how a rigid debt structure was made flexible to meet the necessities of the annual federal budget and of the money market. An account of the foreign debt settlements follows. Then comes a discussion of the treasury surpluses of the post-war period, how they arose and the alternate dispositions of

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them; increased expenditures, decreased taxes, and debt retirement. Chapters on the sinking fund, miscellaneous retirements, and treasury operations in the money market follow. Finally there is a chapter on the "Results of the Debt Policy" in which the author seeks to draw some conclusions on the economics of debt retirement and debt management. The book is primarily descriptive and historical but in parts it is also critical and analytical. The author criticizes the sinking-fund method of retiring the public debt on the ground that this system means nothing so far as assurance to creditors is concerned and it creates much "burdensome paraphernalia". Falling prices following a war may not increase the load of debt payments if the drop is due to economy in the production of goods rather than to a reduction in the volume of money and credit. The much-debated question of whether or not future generations can be made to bear the burden of a war is resolved in the affirmative. This is on the ground that war taxes beyond a certain limit are likely to rest upon those less able to pay whereas subsequent taxes will be paid more largely by the rich. Thus postponement of taxes changes the incidence of the war burden and reduces its total amount. Whether or not it is essential to maintain a federal public debt to absorb treasury surpluses and to facilitate the control of the money market by central banks is considered and decided in the negative. The use of debt to absorb surpluses automatically eliminates the debt sooner or later; the power of central banks over the money market is a very uncertain one and so far as it exists it could be exercised through other media than federal securities. One of the most interesting parts of the book is the appendix in which the author replies to statements of economists who favor cancellation or the radical reduction of foreign debts to the United States. The author describes the position of the cancellationists as "an attempt to promote our own prosperity by paying other nations to take our goods". He regards a removal of trade obstructions as a sounder policy. The book is a substantial and well-documented history of federal debt procedure and policies, and as such should prove most useful and timely. — HAROLD M. GROVES, University of Wisconsin.

Dr. Orestes Ferrara, former Cuban Ambassador to the United States, discusses in a recent volume the subject of *Tentativas de intervención Europea en América, 1896-1898* (Havana, Editorial Hermes, 1933; 176 pp. 3 pesetas). The internal conditions in Cuba prior to 1896 are reviewed, with accounts of Spanish cruelty, consequent revolutions, resultant United States sympathy, accumulation

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of grievances, and democratic propaganda. The economic life of the island is portrayed, with emphasis upon the privation endured by the population. Upon the outbreak of conflict the questions of insurgency and belligerency arose, and it is concluded that *de facto* recognition should be accorded upon evidence of reasonable capacity to discharge the duties of a state. Despite Spanish demands that the United States observe fully the ordinary tenets of international law and comity, the Cuban "*junta*" in New York became increasingly active. Following German efforts to stimulate European intervention, Great Britain suggested a collective note offering mediation. This proposal was favorably received in the United State but did not prevent the outbreak of hostilities in April of 1898. — W. LEON GODSHALL, Union College.

Demokratie und Partei, edited by Peter Richard Rohden (Vienna, L. W. Seidel und Sohn, 1931; 364 pp. Rm. 9.60), presents a record and appraisal of "Democracy" in various countries and political systems of our time—in England, the United States, France and pre-Hitler Germany; and in "Bolshevism, Fascism, and Catholicism". Democracy, defined for the purpose of this study as acceptance of the will of the people as the basis and ultimate judge of all *Politik*, is accepted by the various contributors as a fact and virtual necessity. The subject for debate is therefore not the idea of democracy but the "how" of its realization. The volume gives a vivid and as a rule not too technical picture of the contrasts and likenesses of modern political parties: the Anglo-Saxon two-party system with its majority principle; the coalitions of loose groups and of well organized parties in France and pre-Hitler Germany, respectively; the "patriotic" guardianship of the masses under Fascism; and the Communist Party as mandatory of the proletariat and firm protector of Marxian truth against errors of interpretation, with Soviet rule as the democracy of workers. The social doctrines of the Roman Catholic Church are shown in their relationship to political democracy, ranging from absolute opposition to the pure democracy of, e. g., the Jacobins and the Bolshevists, to proven compatibility with the forms and institutions of modern democracies, such as parliaments, parties and the press. The book under review is a truly *comparative* study rather than merely a series of descriptions of the main Western political systems of today. Almost every contributor drives his points home by references to corresponding or contrasting situations elsewhere. The chapter on Fascism (Wolfango Ludovico Stein, Rome) is the weakest in this respect and

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others, while those on Germany (Edmond Vermeil, University of Strassbourg), France (Peter Richard Rohden), and Bolshevism (Dimitri S. Mirsky, London) are strongest. The study of "Democracy and Parties in Political Catholicism" (Alois Dempf, University of Bonn) is especially valuable and welcome as it deals with a subject usually but undeservedly slighted in studies of this nature, with the result that the fascinating phenomenon of political Catholicism has not attracted the attention which its importance calls for. The contributors, in addition to those already mentioned, and their subjects are: Kingsley B. Smellie of the London School of Economics (England), and Adolf Rein, University of Hamburg (United States. The editor, Peter Richard Rohden of the University of Berlin, has shown great skill in the planning of the book and, on the whole, in the selection of the contributors. A critical, departmental bibliography and an excellent index with cross-references add greatly to the usefulness of the book.—JOHN BROWN MASON, Colorado Woman's College and University of Denver.

Inasmuch as the existing constitutional structure of the British Commonwealth has been the subject of an infinite amount of speculation, the scholarly monograph by K. C. Wheare on *The Statute of Westminster, 1931* (Oxford, The Clarendon Press, 1933; vi, 128 pp. $2.00) is a timely contribution in a controversial field. The point of view of the student of constitutional history rather than that of the lawyer motivates the author in his interpretation of the Statute "as an event in the history of the British Commonwealth rather than as an isolated legal document" (p. v). The title by no means indicates the scope of the book, slightly more than half of which is concerned with developments antecedent to the Statute. An interesting feature of the earlier chapters is the consistent application of Dicey's distinction between legal rules and constitutional conventions to the development of the Commonwealth. A literal-minded critic might question the author's unguarded reference to the "inevitability" of equality of status (p. 43). The last three chapters are devoted to an analysis of the general powers conferred by the Statute on the Dominions, its particular application to each Dominion, and the author's conclusions concerning it. An appendix contains a copy of the Statute. The author contends that while the Statute of Westminster makes clear the powers of the Dominion Parliaments it does not make them equal, either to one another, or to the Imperial Parliament. The excellent chapter on the particular application of the Statute to each Dominion deserves special commendation, and entirely

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justifies the author in his contention that "no unqualified generalizations can be made as to the new legal status which its enactment inaugurates among members of the British Commonwealth" (p. 119). This little book provides an informative and reliable interpretation of the significance of recent changes in the British imperial structure, and of their relation to the evolution of the Commonwealth.—M. MARION MITCHELL, London, England.

Thoughtful students of American society may find even more significance than will students of the Soviet Union in *Duranty Reports Russia,* a republication of the cream of Walter Duranty's dispatches to *The New York Times* over twelve years (selected by Gustavus Tuckerman, Jr.; New York, The Viking Press, 1934; xii, 401 pp. $2.75). As Alexander Woollcott remarks in his foreword, it would almost seem as though "America, in a spasm of discernment, were recognizing both Russia and Walter Duranty." She may well do so; for the reporter is no less necessary to democracy than the legislator or the judge. It was Walter Lippmann who long ago pointed out the function of stereotypes in a Great Society composed of small people. The distracted American citizen now finds himself under the necessity of transacting business with that portentous and kaleidoscopic phenomenon, Soviet Russia. He will of course be dealing, so far as his own mental processes are concerned, not with the actuality but with a stereotype. If there were more journalists like Walter Duranty, the stereotype might bear some recognizable resemblance to the real thing. Mr. Duranty possesses the three qualities essential to good reporting: the art of selection, the art of description, and the art of taking both sides, which last, and not the impossible attempt to take neither, constitutes true impartiality. It is true that, latterly, he has sometimes abandoned the rôle of impartial reporter for that of press agent—a policy which, he would doubtless observe, has been justified by its beneficial results. But on the whole, the picture which he has presented to *Times* readers is probably as accurate as any contemporary account can be, and, while avoiding sensationalism, does not make the mistake of omitting the psychological and emotional factors which play an important part in any human society. To the expert it will doubtless seem oversimplified; but that is its great merit. As a matter of fact even the expert does not disdain the evidence of a shrewd observer on the spot. But what the average citizen requires is a picture. If no one offers him a reasonably true picture he will acquire an entirely false one, and act upon it, with lamentable con-

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sequences. That is why first-rate reporting, such as this book exemplifies, though it may be neither good science nor great art, is a discipline not less socially indispensable than either.—MIRIAM S. FARLEY, New York City.

An attempt is made in *War Out of Niagara* (New York, Columbia University Press, 1933; 309 pp. $3.50), by Howard Swiggett, to transform the cruel, treacherous Walter Butler of tradition to a gallant, humane, loyalist soldier. The author explains that the writings of Robert W. Chambers and others attracted his interest to the shadowy figure whose reputation for hideous villainy was firmly established during the American Revolution. As the detestable instigator of the Wyoming and Cherry Valley massacres, and as the hideous wretch who led merciless Indian savages against his former friends and neighbors, he has been reviled ever since. The mystery which surrounded the life and death of Butler led Mr. Swiggett, who is a business man, to make a careful study of him in the archives and historical collections of this country and of England—of which this volume is the result. Perhaps the author exaggerates the reputation of the man for unexcelled villainy, and too frequently pauses abruptly to emphasize testimony which exonerates him, but the story of his career during the American Revolution is packed with tense drama. The Butler of Mr. Swiggett's book is an intelligent, superior man who at the outbreak of the Revolution decided to remain loyal to Great Britain and to his king. The decision was a difficult one to make, and he acted as he did in the belief that it was the only course for an honorable, loyal man to follow. In the terrible, bloody fighting and brutal butchery which accompanied the warfare in the Mohawk Valley and upper Pennsylvania, between the Indians and loyalists on one side and the patriots on the other, Walter Butler took shape in the minds of the revolutionaries as a figure of spectral horror. According to Swiggett, the Wyoming Valley massacre was not a massacre at all but the slaying of enemies in battle before their surrender. The Cherry Valley massacre was the outcome of the use by the Tory rangers of Indian allies, whose support was not wanted by Butler, because they were undependable in battle and uncontrollable in victory or defeat. These two lurid episodes stand in sharp relief against a background of dark, anxious years during which friends and neighbors took sides against one another in a heartless combat of killing and burning. Through it all, Butler conducted himself bravely, and as magnanimously as is compatible with the pitilessness of war. Mr. Swiggett's description of the revolutionary

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conflict in northwestern New York is a valuable addition to the history of the war and also to the history of the American frontier. Occasionally, it is true, the book suggests that an air of incompleteness in the story is attributable to a lack of evidence. On pages 76-77, events of 1775 and 1776 are confusedly ascribed to one year, presumably 1776. The tangle is finally and completely knotted with the strange statement that "The day Montgomery had taken Montreal, the main Continental Army had lost Fort Washington on the Hudson." The volume, the second in the New York State Historical Association Series of which Dixon Ryan Fox is the editor, possesses an excellent format, of the kind that is typical of Professor Fox's editorship.—SAMUEL MCKEE, JR., Columbia University.

The recent revival of interest in the writings of Karl Marx is at bottom prompted by the desire to understand the processes by which social change is brought about. It was inevitable that the collapse of capitalism in certain countries, the rise of Fascism and Communism and the widespread criticisms of democracy, should lead to the reëxamination throughout Western civilization of the meaning and value of social evolution and revolution. In *What Marx Really Meant* (New York, Alfred A. Knopf, 1934; 309, vi pp. $2.00). Mr. G. D. H. Cole undoubtedly does Marx a service by pointing out that those who believe in his literal infallibility do him really no honor and ignore the fact that he wrote in relation to the economic conditions of the middle of the nineteenth century. The author reviews the familiar doctrines of the Marxist position, shows how they arose and indicates how Marx himself would undoubtedly revise his particular statements were he to recast them in the light of his own premises and present-day facts. He wisely points out that "Every Marxist is compelled by his Marxism to be a 'Revisionist'". Underlying his analysis recurs the problem which he himself states in the following words: "The real question, of course, is whether the new class of *petits bourgeois* that is now interposing itself between the *grand bourgeoisie* and the proletariat is capable of reconstructing the economic system on a broad enough foundation to give it a new lease of life without Socialism." This book can be recommended as one more effort, of which there have recently been several, rightfully to rescue Marx from a too doctrinaire interpretation.—ORDWAY TEAD, New York City.

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